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THE MADRAS LAW JOURNAL.

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THE MADRAS LAW JOURNAL

I] JANUARY [1961

THE HON'BLE MR. B. P. SINHA.

The Hon'ble Mr. B. P. Sinha, Chief Justice of the Supreme Court of India, paid a short visit to South India during December 1960. Members of the legal profession in Madras, Mysore and Kerala were afforded opportunities of meeting the distinguished visitor and hearing his views on matters of interest and importance to the Bench and the Bar in India. It is pleasant to record that his Lordship the Chief Justice holds views, on certain important matters, wholly similiar to those of the legal profession here and gave expression to them in unequivocal terms.

His Lordship's feeling that a high standard of professional ethics should be inculcated in the minds of junior members of the Bar will find ready support in all quarters. The members of the Bar and the litigant public would be particularly pleased at his Lordship's assurance that he was willing to give serious consideration to the proposal that Circuit Benches of the Supreme Court should sit in different centres to enable expeditious and inexpensive disposal of cases.

We shall cherish pleasant memories of his Lordship's visit to Madras and we are confident that his Lordship would equally carry pleasant recollections of his tour in the South.

BOOK REVIEW.

GENTLEMEN OF THE LAW by *Michael Birks*. Published by Stevens & Sons, Ltd., London (Agents in India : N. M. Tripathi (Private) Ltd., Bombay)—Price Rs. 20.

The institution of lawyers, even on present day pattern, is very ancient and England is one of those countries where the institution has flourished in one form or other for over several centuries. But the lawyer has always been the subject of criticism and unfair comment and even literary writers of the past centuries have had their dig at lawyers and law Courts. Lawyers themselves have contributed a great deal in parodying their profession. That the criticisms are unjustified and the picture of the blemishes described by those writers were exaggerated is evident from the fact that the institution has survived these centuries and has attracted the best brains of each age. Most of the leaders in the political field, many eminent parliamentarians and moulders of public opinion in each country have been from among the lawyers of the country. It is fascinating indeed to learn about the historical aspects of this great institution and the ways and practices of those days through which the institution has grown and shaped itself to its present day form. Any one attempting to write on this subject could not help drawing his material from the records of Medieval England.

The author of this interesting work has done a real service in presenting to the public the materials collected from several ancient records regarding the development of the institution of lawyers. The story of the Solicitor from 1200 A.D. to the present day is bound to be of interest and value to one and all. The story is revealed in a simple narrative form which could be followed with interest even by laymen. It is both useful and timely as the profession has come in for a great deal of comment recently.

The book under review is excellently got up with art plates and provides good reading material and could be read with profit and interest by lawyers and laymen alike.

LATE SIR M. VENKATASUBBA RAO

By

V. RADHAKRISHNAYYA.

It is difficult for me to write about the life of Sir M. Venkatasubba Rao without a feeling of deep emotion. We came together in the Madras Christian College in 1895 and our friendship was continuous, close and intimate since then till the Almighty Lord chose to terminate it a few days ago. During this period of sixty years and more I could say with certainty that except when he was employed in the Hyderabad State not a day passed without our meeting and spending a few hours together.

It was barely a few months ago that I was privileged to write a few words about my dear friend in the 'Abhinandan Volume' published to felicitate him on his 83rd birth-day. I had the least idea then that I was to lose him within this short period. This is no occasion to dwell at length on the life history of the departed soul. Great men, known for their learning and judgment, have written about Sir M. Venkatasubba Rao in the Abhinandan Volume. His life as a practising lawyer and as a Judge of the Madras High Court, as a social reformer and a worker, as a philanthropist, entertaining conversationalist and a sociable person, have all been dealt with at length. References have also been made to his great and noble qualities of head and heart by eminent persons in these few days after his death.

The invisible hand of death has separated us and I have to reconcile myself to it. I am grateful to the ever merciful Lord who has given me the privilege of being associated with such an eminent person like Sir M. Venkatasubba Rao. I cannot complain that I have been deprived of a friend prematurely. But still, human as I am, the feeling of sorrow is as intense as the warmth and length of our association during his life.

I would like to quote with approval what is said in the issue of Swarajya of the 7th January, 1961 about the social nature of Sir M. Venkatasubba Rao. Sir M. Venkata Subba Rao had the Frenchman's love of society without his light-hearted gaiety. His house was a salon, where the rich and poor received frequent hospitality and mixed with each other without any sense of difference, whether of status or outlook. What Sir M. Venkatasubba Rao said in his reply to the Farewell Address on his retirement from the Bench years ago reflects his bold and independent outlook as a judge. He said on that occasion "I do admit that justice to be rendered is to be within and not outside the law but much depends on the judge's attitude of mind and the way in which he has developed his judicial conscience. A judge, able and learned and possessing a vision, if intent on advancing justice, is rarely thwarted by the claim of law as opposed to justice on the innumerable controversies which go to make up a case. There are always facts which lend themselves to such treatment as to produce the desired result—without the judge being obliged to wrest or distort the Law—Then again, it is the function of a judge where the law is elastic to adapt it to the growing needs of the community and its constantly shifting life."

The Madras Seva Sadan, known for its excellent work in the cause of the poor and suffering, speaks volumes of the self-less services rendered by Sir M. Venkatasubba Rao and his noble wife who has dedicated her life to the cause of that institution. The great spiritual influence that came over him in the past decade by his devotion to Srimathi Rama Devi is reflected in the Bhajana Hall he has constructed, where devotees congregate in large numbers and derive great spiritual elevation and solace.

A great and good man, who lived a rich, full, and useful life has now left us.

IS THE PRESIDENT OF INDIA A MERE CONSTITUTIONAL HEAD ?

By

C. S. SUBRAMANIA AYYAR, *Advocate, Madras.*

The status of the President of India in the Indian Constitution is an anomalous one, resembling that of the American and Irish Presidents in certain respects, and that of the British Crown in certain other respects, and it cannot be strictly said to belong solely to one of the two forms, Presidential or Monarchical as in England. India is a Republic, and not a Constitutional Monarchy. Powers of the executive are granted by the people and governed and controlled by a written Constitution. (*Duncan* v. *Machall*)[1]. There is no scope for the rule of reign of a hereditary monarch or any privileged class, as the President of India is elected on a broad basis from out of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. Under Article 56 of the Indian Constitution, he is removable by impeachment under Article 361, *etc.* So the President has to be responsible to the people. He is above party politics, unlike the Prime Minister of India, who though responsible to Parliament and the people of India, owes his position to the support of the party which has a majority in Parliament. The Prime Minister is not elected by the whole of India in the sense in which the President of India is deemed to be elected, though indirectly.

The President, under Article 60 of the Constitution of India, swears to preserve, protect and defend the Constitution and the Law, whereas Union Ministers swear only to faithful allegiance to the Constitution, and honest and diligent execution of their duties There is no specific provision in the Indian Constitution for impeachment of Ministers as in England. The President appoints the Ministers who hold office at his pleasure, individual ministers have access to the President of India unlike under the English practice, and allocation of portfolios among the Ministers is done by the President in contrast with the English practice, where the Prime Minister alone allocates portfolios. The President of India has a right to see that individual decisions of Ministers are being referred to the Cabinet for joint decisions of policies, as there is collective responsibility under the Indian Constitution, which is generally done only by the Prime Minister in England. The President has rule-making powers and right of information from Ministers, and there is collective responsibility of the Cabinet, and the Ministry will have to resign if there is no majority in Parliament to back them. Individual Ministers may have also to resign if they do not pull on with the rest of the team. Under Article 74 of the Constitution, the Cabinet of Ministers aid and advise the President, and no Court could go into the question whether and what advice was given to him by the Ministry. It is not specifically mentioned that the advice of the Cabinet is binding on the President nor is any reference made in any part of the written Constitution to such convention or usage, or any general indication in the Constitution itself that the construction of the written part is to be made with reference to the debates in the Constituent Assembly.

On the other hand, the words of the Constitution unambiguously exclude any reference to extraneous matters for construing the Constitution. The Preamble, Articles 53, 73, 368, 375 and 393—all refer to "*This Constitution*" which means the written Constitution. There appears to be no ambiguity latent or patent with regard to the grant of power to the Executive and the mode of exercising it. The only place where "custom or convention" is mentioned in the Constitution, is Article 13, where "Law" is said to include custom, and therefore no custom or convention will be valid when pitted against a fundamental right, and hence the President may even be said to be authorised by Article 60 of the Constitution to refuse to follow the advice of the Ministry when the action proposed by the Ministry may lead to a violation of the Fundamental rights and hence of the Constitution also. There is no definition of the word "violation of the Constitution" in any part of the Constitution and hence the term must be widely construed to include

1. 139 U.S. 449.

the violation of Fundamental rights as well as Directive Principles of State Policy. By the appointment of Finance Commission by the President of India, the ambit of the field of ministerial advice is narrowed, as the advice of the Ministry is to be replaced by another Advisory Body.

The Constitution, in unambiguous express words confines the execution of powers to be guided by the written words of the Constitution, and makes no reference, either in the definition, or the explanation chapters or Articles, about the feasibility of resorting to extraneous evidence of intention. Merely because under Article 105 of the Constitution, powers, privileges and immunities of the Houses of Parliament in India are mentioned to be those of the House of Commons in England until legislation is framed in India, it cannot be said that the powers of the Executive in India are those of the Cabinet Ministers in England. In a Republic the Executive derives its authority from specific grant of power alone.

Even though the express words of the Constitution preclude any reference to extraneous evidence of intention, it may be argued that for practical purposes, a reference may be made to extraneous matter, and if on such consideration reference is made to the Constitutent Assembly debates, notwithstanding the prohibition contained also in Article 73, it will be seen that the proposal to provide in the Constitution for an Instrument of Instructions to the President and Governors, making it obligatory for them to follow ministerial advice, was omitted later on by the Constituent Assembly of India. There is something much more than what is spoken in the Constituent Assembly debates, and probably it was thought that, it may not be safe to bind the country for all time by inserting such express provision, as the ministry too may not behave properly always, and there was no express provision in the Constitution for impeaching them, and the President has the onerous duty under the Constitution to preserve, protect and defend the same and the Law. So prudence dictated that conventions may grow either way in future.

The Supreme Courts of America, and India, have maintained that reference to Constituent Assembly Debates is made only for proving the intention when there is latent ambiguity in the words of the Constitution, and that the Constitution, unlike ordinary Statutes should be interpreted liberally, as the Constitution is meant to survive all changes in the conditions of life of the people. It should not be interpreted in such a way as will lead to the presumption that life is static. Constituent Assembly members may not have been *ad idem* on all the points discussed, as nothing could be easily said to be the only view of the entire body. Nor could they have visualised all the changes in the conditions of life and environments of people so as to provide for them. The personalities of individual Presidents or Prime Ministers may have undue weight in coming to decisions on large issues of Administrative policy, ha and sometimes the pendulam may swing in favour of Presidential prerogatives, as in America, if great Presidents like Abraham Lincoln occupy the Presidential Chair in India. Tables may be turned in India also in favour of Presidential powers on future occasions. Hence the Constitution actually made must as far as possible include its application to new conditions also. As for example, the Ministers of India may be away in a foreign country on business, leaving the President in India, and can it be said that in case of a sudden atomic war on India's frontiers by a foreign power, the President of India has no initiative to defend the country, and so must wait till he is advised by the Ministry? Innumerable instances of such type may be visualised under modern conditions when science and technology have advanced so much. Therefore any interpretation of the Constitution must be made to suit modern conditions.

Therefore the theory of the office of the President of India being wholly alike to the British Crown, is neither supported by the words of the Constitution or the general principles of Constitutional interpretation. It must also be said, that unless the President of India is said to have been empowered to exercise his discretion in matters of emergency, the Constitution could not be read as being composed of mutually related and consistent parts. The general rule of

Constitutional interpretation is, that a Constitution should be so read as to make the Constitution "as framed" stand, and none of the provisions stultify against the rest. Following this principle, I have to make the following observations :—

It appears to me, that the words occurring in Article 53 of the Constitution, "in accordance with *this* Constitution", though qualifying the President's executive authority as defined in Article 75, also amplifies his authority to assume discretionary powers in an emergency, in order that he may under Article 60 "preserve, protect, and defend the Constitution and the Law and devote himself to the service and wellbeing of the people of India". Under Article 361, the President is not answerable in any Court for exercising his functions except in an impeachment proceeding under Article 61. But the responsibility lies on the President by virtue of Article 60 to defend and protect the Constitution not only against external enemies, but to save it from his friends too, or members of his own party, who might want to abuse their right of being a majority party in Parliament, and advise him to violate the Constitution.

Since the authority of the Supreme Court of India to go into the question whether there has been a violation of the Constitution, has not been excluded under Article 136, and the other House or authority examining the charge of violation in an impeachment proceeding or any Tribunal being invested by them with such authority, is likely to be construed as a Tribunal or Court for the purpose, violation of the Constitution and the Law will be an objective offence, and not a subjective one, inspite of the support of a 2/3 majority in favour of the impeachment proceedings. In such a case, the defence of the President that he acted on the advice of the Ministry and not on his initiative may be of no avail, as the President is sworn to preserve, protect and defend the Constitution under Article 60, and further under Article 74 (2), no enquiry can be held by any Court in the matter of whether and what advice was tendered by the Ministry to the President. In order that the President of India should be able to defend himself properly in an impeachment proceeding, he should be allowed to let in evidence as to what advice the Ministry gave him, and that he never acted in his discretion, in case the analogy of the Crown being bound by the Cabinet advise in England is to be applied to India. This will be the awkward situation to which the President's position will come to, if his status in the Constitution is wrongly likened to that of the British Crown. It may be difficult for the President in such a contingency where he is precluded from letting in evidence, to escape vicarious liability in an impeachment proceeding. The Union Ministry will escape in such situations as there is no express provision in the Constitution for impeaching them. The President may have to anticipate the gross abuse of power by the Ministry, and dismiss them, but the trouble will not end there, if the dismissed Ministers again have a backing of the people as well as Members of Parliament on a fresh election, and the President may have to face a hostile Parliament. Therefore, construction of the Constitution on the analogy of the English practice may lead to an unresolvable crisis in India.

Therefore, in my opinion, in order that the Constitution as framed, should hold good as one piece of consistent legislation, and in order that a Constitutional crisis of magnitude may also be averted, it is fitting, that the Constitution is read in such a way as to fit in the provisions giving the President rights with those saddling him with responsibilities, that is to say, the Constitution should be so read as to mean that the provision in Article 74 was so worded purposely so as to vest in the President, discretionary power in emergencies, and that nobody could challenge such emergency action by the President on the ground that such action was not in accordance with the Constitution under Article 53, and that is why evidence as to whether, and what advice was tendered by the Ministry to the President, is precluded under that Article. This mode of interpretation would make the President of India more akin to the American President than to the British Crown.

In my opinion the Constitution unambiguously provides that the advice tendered by the Ministry is, as a working rule, to be accepted by the President

in normal cases, but the President has *corrective powers*, as he can override and is bound to override the advice of the Ministry, in matters of emergency, when his duty under Article 60 to preserve, protect and defend the Constitution and the Law arises, out of his duty to work for the service and well-being of the people of India and not of any particular party. The Ministry will have to accept, in such situations, the President's discretion in turn, as they are sworn "to do right to all manner of people in accordance with the Constitution and the Law without fear or favour, affection or ill will ".

The Indian Constitution, thereby, provides for protection of the minority parties in Parliament from oppression by the majority party by vesting discretion in the President of India in emergencies, in the same way as the Governor is empowered to have discretion under Article 163, and has to tender advice to the President of India to protect the minority party in State Legislature, from oppression by the majority party, and if necessary to dissolve the Legislature and Cabinet as was done in Kerala recently. Without such power in the President, the Country could not be properly protected and defended in case of external invasion, and there would be no option for the minority party but to resort to civil war in order to overthrow the tyrannical majority party, and that is why, discretion has been vested in the President of India to assert himself in emergencies.*

DEATH PENALTY

By

K. G. Subramanyam, M.A. B.L.

Certain offences such as murder (section 302, Indian Penal Code) are punishable with death or with imprisonment for life. Sub-section (5) of section 367, Criminal Procedure Code, as it was prior to its repeal by Act XXVI of 1955, provided that if the accused is convicted of an offence punishable with Death, and the Court sentences him to any punishment other than Death, it should in its judgment state the reason why the sentences of Death was not passed. Interpreting this sub-section (5) Courts had held uniformly that a sentence of Death was the normal sentence for murder and that whenever a Judge should sentencehe person to the lesser penalty, he had to give adequate reasons therefor—or in otther words, unless he was able to find some mitigating or extenuating circumstances in favour of the accused, he had perforce to sentence him to Death. The statement of the law contained in these decisions were based only upon and could be supported only by the wording of the sub-section (5) as already stated. (See *Ramudu* In re[1], *Boya Burranna* In re.[2]

The sub-section (5) of section 367, Criminal Procedure Code as it stood, has been repealed by Act XXVI of 1955 with effect from 1st January, 1956. The basis for the assumption that Death penalty is the normal penalty for the offence of murder having been removed, the question of proper sentence where a person is convicted of murder is to be decided not at all on any such assumption, but like any other point for determination with the decision thereon and the reasons for such decision as provided by sub-section (1) of section 367, Criminal Procedure Code. This aspect has been judicially noticed in *Satya Vir* v. *State*[3], *Khanzaday Singh* v. *State*[4]. In a very recent case reported in *Ram Singh* v. *State*[5], the Court observed " Courts are now no longer required to elaborate the reasons for not awarding the Death Penalty, but they cannot depart from sound judicial considerations in preferring the lesser punishment." The Court however did not consider that the amendment affected the law regulating punishment under the Code. The sentence of Death passed by the Court in that case might be fully justifiable, as it was a treacherously planned

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* 'Law of Emergency', Madras University Lecture, 1956.

1. (1942) 2 M.L.J. 312 : I.L.R. (1943) Mad. 248.
2. (1955) Andh.W.R. 183.
3. A.I.R. 1958 All. 746.
4. A.I.R. 1960 All. 190.
5. A.I.R. 1960 All. 748.

robbery with murder in coldblood of the master by his servant. The observations of the Judge to the effect that there is no change in the law were unnecessary for the decision and it is submitted that they are not fully justified. The effect of the repeal of sub-section (5) does not appear to have been considered in the other cases reported.

The discretion to award any sentence is now to be exercised without any statutory restrictions but on sound legal principles. In consequence, since no Court is bound to pass the maximum sentence provided for any offence, it becomes, in my view, incumbent on the Court when it takes the extreme step of sentencing the accused to Death, to provide adequate reasons why in the light of the evidence before it, it has to inflict the maximum penalty known to law. Instances of murders connected with robbery, or brutal or coldblooded murders, or motiveless homicidal malignities would fall presumably in this category. All other cases would logically call for lesser punishment as it is no longer necessary to require any extenuating circumstances "in mitigation of the offence" as was the case under old sub-section (5) of section 367. In this view it may be no longer necessary to recommend cases for commutation of Death penalty to Government since Courts are not obliged to pass the Death Penalty, and they have ample discretion—not being bound by any statutory limitations—to award the lesser sentence.

The following observations of Agarwala, J., in *Moolchand* v. *State*[1], are worthy of note:

" Under section 302, Indian Penal Code, a discretion is vested in Courts either to impose a sentence of Death or of transportation for life. Discretion must always be exercised according to principles and not according to the humour of the Judge, arbitrary or fanciful. The principle upon which discretion is to be exercised not being fixed by any statute, may be interpreted progressively in accordance with the spirit of the times, so that real and not technical justice may be secured. To my mind the true principle of exercising the discretion of imposing either the penalty of Death or of transportation for life should be that the sentence of Death is awarded in cases in which the act is very brutal and highly repugnant to morals and the sentence of transportation of life is imposed in all other cases." This view was held to be in conflict with the express provisions of sub-section (5) section 367 as it stood. See *Boya Burranna* In re[2]. Now that the sub-section (5) is repealed, the view of Agarwala, J., so clearly expressed above should represent the correct principle of law.

From reports of some cases appearing in the papers, I have a misgiving that this aspect might not have been duly considered by Courts. I venture therefore to place this aspect for consideration of Courts and those concerned in Criminal trials since I hold the view that the the imposition of the Death penalty on any citizen is a very serious matter.

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1. A.I.R. 1953 All. 220. 2. (1955) Andh.W.R. 183.

LEGALITY OF STAGGERING PENALTIES IMPOSED ON ADJUDICATIONS BY ADMINISTRATIVE AGENCIES EXAMINED

By

K. C. RAJAPPA, *Advocate, Madras.*

Leaving aside for separate treatment the merits and demerits of adjudication proceedings in *Sea Customs cases*—recently extended to Foreign Exchange violations (since they are common to other Administrative Tribunals which have come to stay—indeed on the increase) it is proposed to examine here, the legality of the staggering penalties running into six or seven figures, which the authorities are imposing even after the Constitution with its many valuable safeguards. This question of legality (which alone Courts can examine—not the severity or excessiveness of the penalties) has been the subject of judicial decisions of several High Courts during this decade and latterly of the Supreme Court also and yet, strange as it may seem, uncertainty prevails still on this question and in several States the amazing penalties continue to be imposed just because the respective High Courts of those States did not consider them illegal. This is unfortunate and certainly is avoidable, since the Supreme Court has expressed its views about the illegality in no uncertain terms in three cases, which some High Courts—but not all, have treated as binding decisions. Here is a fine opportunity for the Union Government to intervene and issue Executive instructions that the view of the Supreme Court will be followed by its Administrative Officers in awarding penalties in their Adjudication proceedings even in the States where the High Courts had expressed a contrary view. It is sometimes pointed out—and rightly too, that in many cases the Executive Authorities are in a position to do justice and relieve hardships which Courts may be powerless to do, on account of the inelasticity of Statutes and technicalities and procedure. To cite an example, Judges are required by law to award in murder cases a sentence of death or life imprisonment. Even when they think the lesser punishment is far too severe under the cirumstances of the case they can only move the Government to exercise their powers vested in them and mitigate the hardship. Protagonists of Administrative justice cite this advantage as a point in favour of it.

During all these years the Appeals to another Administrative Authority provided by the Acts have not appreciably served to mitigate the hardship and injustice of these hair-raising penalties. While having an eye on Government revenue they perhaps satisfied their conscience by accepting and following the view that no quarter should be shown to smugglers and no punishment is too severe for them. This is a relic of the days when sheep-stealing was a capital offence. These Departmental Appeals have in practice proved to be inadequate and ineffective and an eminent Chief Justice while over-ruling an objection that the Petitioner did not exhaust the remedy (Appeal) provided by the Sea Customs Act to a higher Departmental authority observed, that these Appeals were from Cæsar to Cæsar.

The gravamen of the objection is often missed ; it is not so much against the excessiveness of the penalties provided in the Act as against the fact that the power of imposing them is vested in the Executive or Administrative Officers of the Government and not in Courts or Judicial Tribunals. It is well known that numerous Statutes in prescribing fines have fixed no limit or maximum, but this circumstance, has not led to the imposition of these staggering penalties. The traditions of Courts, the judicial training of the presiding Officers, no less than the several Appeals and reviews provided in judicial orders, have all contributed to the entire absence of such amazing penalties. Recently, a penalty of fifty-five lakhs was imposed in a certain Adjudication proceedings. Is such a thing conceivable in a Court of Law ?

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NOT TO BE REMOVED

Before proceeding further it will be better to establish the point mentioned at the outset, that the question of maximum penalty was actually decided by the Supreme Court in *F. N. Roy's case*[1], though a Full Bench of the Madras High Court was under a misconception that this is not a decision but only an observation. The following quotation from the judgment of the Supreme Court is self-explanatory.

"Another similar argument (of Petitioner's Counsel) was that section 167 (8) of the Sea Customs Act itself offended Article 14, in that it left to the uncontrolled discretion of the Customs authorities to decide the amount of punishment to be imposed."

This objection was answered by the Supreme Court in these words :

"The section makes it clear that the maximum penalty that might be imposed under it is Rs. 1000. The discretion that the section gives must be exercised within the limit so fixed. This is not an uncontrolled or unreasonable discretion...."

It is unfortunate that the Full Bench of the Madras High Court in *Sheik Dawood* v. *Collector of Central Excise*[2], missed or overlooked the first of the two passages quoted above and fell into the error of thinking, that the scope of section 167 (8) was not before the Court at all. (*Vide* passage quoted below.)

"From what we have just stated it will become apparent that the only question before the Court was as regards the scope of section 183 and the scope of section 167 (8) was not before the Court at all."

Earlier the following observation occurs :

"It will be noted in that case the amount of penalty imposed was only Rs. 1000 and so the question whether the appropriate Customs Officers could impose a penalty in excess of Rs. 1000 did not arise for consideration."

True, the petitioner did not complain that he was awarded a penalty in excess of the permissible limits but, he went much further and contended, that the entire penalty provision offended Article 14 since it gave uncontrolled discretion to the Customs Authority to impose penalties. Counsel went on the footing that Rs. 1000 mentioned in the clause was not the maximum (because it was not stated or even so indicated.)

The Supreme Court however saved the penalty clause from the attack on its constitutionality by interpreting that Rs. 1000 was the maximum *and so* there was no uncontrolled or unreasonable discretion. But for this interpretation, the entire provision should have been struck down, as offending Article 14. One may respectfully question whether as stated by the Supreme Court, the section makes it clear that Rs. 1000 is the maximum. Far from this being so, several learned Judges *whose attention was not drawn to Article* 14 thought that in the absence of any words like "whichever is less" both alternatives are permissible and legal. Be that as it may, *F. N. Roy's case*[1] is a binding decision on the point that Rs. 1000 is the maximum (legal) penalty leviable under section 167 (8) of the Sea Customs Act and until the Supreme Court sees fit to revise this opinion, it is law of the land. Moreover, having regard to Article 14 which forbids the vesting of unguided, uncanalised, uncontrolled or unreasonable powers in the Executive, a maximum has to be fixed and all that the Supreme Court did was to treat Rs. 1,000 as that maximum and it also happened to be not unreasonable.

How differently this very case of F.N. Roy was viewed by other Judges that is, as a binding decision (not as casual remark or observation) will now be examined. Armed with the decision in *F.N. Roy's case*[1] one Hammid Sultan challenged the penalties imposed on him by the Customs authorities—Rs. 10000, in one and Rs. four lakhs in another case. K. T. Desai, J., of the Bombay High Court in a well-considered judgment observed, relying on the observations in *F. N. Roy's case*[1] :

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1. (1957) S.C.J. 734 : (1957) M.L.J. (Crl.) 684 : A.I.R. 1957 S.C. 648.

2. (1960) 2 M.L.J. 230 : (1960) M.L.J. (Crl.) 626 : I.L.R. (1960) Mad. 961 (F.B.).

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"It is not possible to consider these observations as mere passing remarks. The observations have been made with a *view to make them the foundation for the decision* that there was uncontrolled or unreasonable discretion vested in the authorities entitled to impose a penalty. In my view, these observations by necessary implication over-rule the view of the Bombay High Court taken in *Mohandas Iswardas v. Sattanadhan*[1]. The decision of the Supreme Court does not refer to the aforesaid Judgment of this Court and the reasons on which it was based. But that fact cannot affect in any way the *binding character* of the decision of the Supreme Court. Following the decision I hold, the Additional Collector of Customs was not entitled to impose a penalty of Rs. 10,000 as he has done, the maximum limit of this power being the imposition of a penalty of Rs. 1,000."

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The Judge had not even a shadow of doubt that *F. N. Roy's case*[2] was a decision, also on the point of the penalty clause in section 167 (8), Sea Customs Act. He therefore treated the Bench decision of the same High Court as impliedly over-ruled by the Supreme Court decision and quashed the penalty which exceeded Rs. 1,000. In Madras, however, Rajagopala Iyengar, J., being of opinion that in view of *F. N. Roy's case*[2] the Bench decisions of the Madras High Court to the contrary call for reconsideration and suggested that a Full Bench should decide this. That is how the matter came up before the Full Bench and ended in the way as already stated.

An appeal was preferred by the Customs authorities and the Bench consisting of Chainani, C.J. and S.T. Desai, J., delivered a judgment on the 30th March, 1959, in Appeal No. 39 of 1958 confirming the judgment of T. Desai, J., in W. Misc. App. No. 377 of 1957. It is a judgment wherein the various arguments raised on behalf of the Government by Sir Nasserwanji, Engineer, have been fully answered, and it will repay perusal. But it does not appear to have been reported. It appears a certified copy of this judgment was filed by the parties before the Full Bench, but there is no reference to this in the Full Bench Judgment. It is noteworthy that the Bench went further than K.T. Desai, J., who treated *F.N. Roy's case*[2] alone as the decision of the Supreme Court. The Bench observed that the Supreme Court having said in *Babulal Amthalal's case*[3], in clear words that it had held in *Maqbool Hussain* v. *State of Bombay*[4], that Rs. 1000 was the maximum permissible penalty, it was not open for them to say that Bhagwati, J.'s observations in the latter case were casual or passing remarks. The passage relied on by the learned Chief Justice of the Bombay High Court is extracted below :

"If section 167, clause (8) lays down in addition to confiscation of the goods, the persons concerned shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees. *This Court has held* that the minimum is the alternative."

The learned Chief Justice went on to observe :

"In this case therefore the Supreme Court has referred to the above observations of Bhagwati, J., in *Maqbool Husain's case*[4] as something which it has held. Consequently, it is no longer open to this Court to say (as Chagla, C.J., had said in an earlier case) that the above observations of Bhagwati, J., is only a casual observation or that it was only an obiter. The Supreme Court having regarded it as a decision that observation is binding upon us. Accordingly, we must hold that the Collector of Customs was not competent to impose a fine exceeding Rs. 1,000."

Then follows a quotation of the relevant passage from *F.N. Roy's case.*[2] It is noteworthy that the same Constitution Bench of five Judges decided both these cases. This is not without some significance. The Full Bench in the Madras case, however did not treat either of these cases as a decision, as the following passage shows :

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1. A.I.R. 1955 Bom. 115.
2. (1957) S.C.J. 734 : (1957) M.L.J. (Crl.) 684 : A.I.R. 1957 S.C. 648
3. 1957 S.C.J. 828 : 1957 M.L.J. (Crl.) 765 : A.I.R. 1957 S.C. 877.
4. (1953) S.C.J. 456 : (1953) 2 M.L.J. 113 : A.I.R. 1953 S.C. 325.

"Notwithstanding incidental or parting expressions of opinion that had been made on three earlier occasions the Supreme Court expressly refrained from saying anything in the matter in *Leo Roy's case*[1]....."

This very point of non-mention was the basis of an argument by Sir Nasserwanji Engineer. Chainani, C.J., countered it in this wise :

"It will not be right to draw an inference that the point had not been previously considered or decided by the Supreme Court. The question did not arise in this case and consequently it was observed that it was not necessary to express any opinion on it."

It may be mentioned here, that about a year later that is, on 5th March, 1960, a Division Bench of the Punjab High Court consisting of the Khosla, C.J., and Bedi, J., has also held that a penalty exceeding Rs. 1,000 is illegal under the Sea Customs Act.

It is feared that until the Madras Full Bench judgment is reversed by a fuller Bench or by the Supreme Court in Appeal, the Customs authorities in Madras will continue to impose penalties far in excess of Rs. 1,000 taking shelter under the Full Bench ruling. The Calcutta High Court has also taken the same view as the Madras High Court in *Palriwala Bros. Ltd.* v. *Collector of Customs.*[2] despite what the Supreme Court had stated in the three cases. What is the remedy? If someone moves in the matter—someone with status and stature—it is possible, the Union Government may intervene and issue instructions to the Madras Officials to confine the penalties to the limit of Rs. 1,000 in conformity with the express views of the Supreme Court. Another course is to add an *Explanation* to section 167, clause (8) to make it clear that Rs. 1,000 is the maximum penalty under the clause.

DOUBLE JEOPARDY : While on this topic another hardship which is tantamount to injustice, one frequently finds in Customs cases, is, that in addition to confiscation of goods and imposition of penalty, the offender is in many cases, also prosecuted in Court and receives a sentence of imprisonment or fine or both. The Madras Full Bench case referred to above is a case in point. As the law stands to-day the victim of these successive penal proceedings is unable to invoke Article 20 (2) of the Constitution, known as the rule of "double jeopardy". The Supreme Court decision is clear on this point (vide *Thomas Dena* v. *State of Punjab*[3]. The Supreme Court held that the proceedings before the Sea Customs authorities even though it might result in the confiscation of the goods and increased rates of duty or penalty did not constitute "prosecution" within the meaning of Article 20 (2) of the Constitution. This decision is in line to the earlier decision of the Supreme Court in *Maqbool Hussain's case*[4]. Though Article 20 (2) cannot be invoked, few will dispute that the proceedings clearly amount to a hardhship, if not harassment also.

The principle of double jeopardy underlying the Article does apply to these proceedings and this justice can only be dispensed by the Government issuing Executive instructions that the Customs authorities should make the choice and be satisfied with only one of these remedies. It is not necessary to amend Article 20 (2) though when a general amendment of the Constitution is undertaken the point may be remembered for inclusion in the Article. That the injustice in question is not a fancied one, but really substantial, was recognised by Subba Rao, J., in his dissentient judgment in the very case referred to above.

" I have therefore, no hesitation to hold that the Customs Officers in so far as they are adjudging upon the offences mentioned under section 167 (8) of the Act are functioning as judicial Tribunals. If the other view, *viz.*, that authority is not a judicial Tribunal be accepted, it will lead to an anomalous position which could not have been contemplated by the Legislature. To illustrate, a Customs Collector

1. (1958) M.L.J. (Crl.) 289: (1950) S.C.J. 301.
2. A.I.R. 1958 Cal. 232.
3. (1959) S.C.J. 699 : (1959) M.L.J. (Crl.) 474 : A.I.R. 1959 S.C. 375.
4. (1953) S.C.J. 456: (1953) 2 M.L.J. 113 ; A.I.R. 1953 S.C. 325.

may impose a penalty of twenty-five lakhs, as in this case on a finding that a person has committed an offence under section 167 (8) of the Act and the accused can be prosecuted again for the same offence again before a Magistrate. On the other hand, if the prosecution is first laid before a Magistrate for an offence under section 167 (8) and he is convicted and sentenced to a fine of few rupees he cannot be prosecuted and punished again before a Magistrate." It is not a rare experience, that dissenting judgments of to-day become the spearheads of progressive and beneficent legislation of the future. Also that they sometimes become the leading judgments a few years later. Nevertheless, it will be too sanguine to hope that in the immediate or near future the judgment of Subba Rao, J., will become a decision of the Supreme Court. Is this not a fit case for the Congres Government which claims to follow the high ideals and standards of justice set up by Mathatma Gandhi to step in and remove the hardship and harassment by its *fiat*? May be, the Law Commission will consider in time the general revision of these Statutes which may have been tolerated in the pre-constitution days, but are inconsistent with the spirit if not the letter of the Constitution. It is not too much to expect the Members of the Bar Associations to take an interest in these matters and bring to the notice of the authorities the remediable hardships, and injustice, which may be removed by Legislative or Executive measures. It is gratifying to note, there is a growing awareness of this responsibility and duty. Before concluding, it is appropriate and even necessary to say a few words about the penalty provision in the Adjudication proceeding introduced three years ago in the Foreign Exchange Regulation Act. It was left to Shri Chintaman Deshmuk, a distinguished former Finance Minister, to raise his voice of protest against this measure. He said in the course of Srinivasa Sastri Memorial Lectures in Madras University in October, 1959 :

" Mr. Srinivasa Sastri held, it was admitted as an universal principle, that where you arm the Executive with arbitrary powers you must be always prepared for its abuse. Had he been alive to-day, I am sure he would have strongly disapproved *as I do*, the transfer of cases of transgression of the Foreign Exchange Regulation Act from the regular Courts to a one-man Administrative Tribunal (Director of Enforcements) not perhaps as holding a threat of injustice to the individual, but as an instance of the tendency, fatal to the working of democracy, to translate quasi-judicial proceedings to the shady penumbra of Administrative-Law, where the absence of the limelight of open public trial could lead to an unduly gentle treatment of influential offenders". (A short comment on the last few words may not be irrelevant. It might lead equally to an unduly harsh treatment of persons who have lost favour or are disliked by the powers that be.)

Here the criticism will be confined to the legality of the penalty clause. Profiting by the discussions in Courts based on the absence of words "whichever is less" or "whichever is more", the penalty clause in section 167, clause (8) of the Sea Customs Act, the draftsman while settling the wording of the penalty clause for the adjudication proceedings, newly introduced in the Foreign Exchange Act, thought it wise to remove all ambiguity by adding the words " whichever is more ". He thus provided for a statutory minimum that should be levied and not a maximum which the law *after the Constitution* requires to provide for making the provision legal and constitutional.

Let us examine now whether the penalty provision as it now stands is legal and constitutional. This point has not so far been the subject of any authoritative decisions of Courts. It is however possible to derive assistance and guidance (in answering this question) from the decided cases under the analogous provision of the Sea Customs Act, some of which have been discussed above. It is enough to start with the case of *F. N. Roy* v. *Collector of Customs*[1], as a sheet-anchor. As already shown above, the constitutionality of the penalty clause was challenged by Counsel on the ground that it gave uncontrolled and unreasonable discretion and power to the Customs

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1. (1957) S.C.J. 734 : (1957) M.L.J. (Crl.) 684 : A.I.R. (1957) S.C. 648.

authorities to impose huge penalties—an every day occurrence. For several years, the High Courts had held that both the alternative penalties were permissible and legal and as the words "whichever is less" were not in the provision, Rs. 1,000 was not the maximum penalty leviable. In this form, the question was raised for the first time before the Constitution Bench in *F. N. Roy's case*[1]. Their Lordships of the Supreme Court were left with two alternatives. One, to strike down the penalty clause as violative of Article 14, in that, it prescribed no maximum, and thus gave uncontrolled and unreasonable power and discretion to the Executive authorities to impose penalties. The other alternative was to construe the clause and interpret it, as if, the second alternative *viz.*, Rs. 1,000 was the maximum. In this view the clause would survive the challenge made by counsel under Article 14 on the footing that Rs. 1,000 was not the maximum (as decided by several High Courts previously). Taking guidance from this decision there can be little doubt that the penalty clause relating to the adjudication proceedings in the Foreign Exchange Regulation Act is void and unconstitutional, because of the addition of the words "whichever is more", after the second alternative Rs. 5,000. These words destroyed all chances of saving the provision and treating it as legal and constitutional by treating Rs. 5,000 as the maximum of the penalty awardable. Being a Foreign Exchange matter Rs. 5,000 in place of Rs. 1,000 found in the Sea Customs Act could not be considered unreasonable. Even a higher limit than Rs. 5,000 may not have drawn the frowns of the Supreme Court. What will not be tolerated, is, penalties like fifty-five lakhs, which was actually imposed in a case, not long ago, which received some publicity. Here again, those in high authority are in a position to see that the Act is worked without undue hardship by issuing Executive instructions to the Director of Enforcements. This is not an abridgement of the rights or privileges of a citizen. On the other hand, it is intended to benefit him and save him from the harassment which the provision as it stands, permits, unless its constitutionality is challenged in a court as was done in *F. N. Roy's aase*[1]. If this benefit is conferred by Executive instructions without forcing the parties to adopt the expensive remedy of testing the validity of the matter in the highest Courts, there will be supporters and advocates of the enlargement of subjects entrusted for decision to Administrative Tribunals.

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1. (1957) S.C.J. 734 : (1957) M.L.J. (Crl.) 684 : A.I.R. (1957) S.C. 648.

THE LAW AS AN INSTRUMENT OF SOCIAL TRANSFORMATION.*

Mr. Vijayaraghavachariar, Mr. Parthasarathy and friends,

I am very happy to be here today. This entire day I have been reviving memories of the two very pleasant years I spent here, and in meeting friends. On this occasion, I would first like to devote a few words to two matters. The first is Mr. Vijayaraghavachariar's eulogy about myself. I am afraid that he has taken the privilege of friendship to paint me in far too glowing colours. I assure you that I am not the formidable person that he has made me out to be. I hope that you will take his references to myself *cum grano solis* that is, with a grain of salt, and not regard me with that awe which a supposed Encyclopaedic knowledge inspires in others.

The other reference that I desire to make is to the revered gentleman in whose memory these lectures are endowed. I knew Mr. Sundaram Chettiar very well. I can even claim that he seemed to have a warm corner in his heart for me. He was not merely a great Judge. He was that rare individual, a man in whom humility overshadowed his considerable intellectual stature. He was also very human; more than one speaker today has referred to his humanity. Above all, he was a profoundly religious person, in the intrinsic sense of that term. I doubt if I could convey to you what exactly Mr. Sundaram Chettiar was, with regard to religious feeling and belief, without taking you far, which I do not propose to do. But I can tell you that he was a man constantly willing to subordinate himself and his claims, to truth. I do not know if a higher tribute than that could be really paid to a person's memory.

My subject this evening is a somewhat difficult one. I have a certain diffidence not from inexperience in speaking to people, but from the possibility of failure of communication at a certain level. So, may I request you to follow me rather closely? I am not presenting rhetorical or emotional appeal, but a certain thesis, which does involve a little philosophical reasoning. Mr. Vijayaraghavachariar has already frightened you about me as a metaphysician. So, I hope you will pardon me, if I try to be slow and clear. All that I can tell you is that if you do follow me, you will see a certain facet of the subject which you perhaps did not think over till now. Not that it is very profound, but that it is not always apparent. A certain problem in a Democracy relates to those who have charge of the destinies of others, *viz.*, politicians. They are the engineers of social change. Change requires thought, and politicians have no time for thought. Philosophers can think; but they are not in charge of affairs. This creates a dilemma, which can only be solved by educating the men concerned, you and me, about the reality behind social change.

My subject is: Law as an Instrument of Social Transformation. I presume that a Social Transformation is essential. I presume that none of us is satisfied with society as it exists. If you are satisfied, you have to walk out of this hall, for there can be no further communication. But if you think with me that society is in a state of degeneration, then the question of a radical, profound change, necessarily arises. Society is in a visibly parlous state. Not merely is cynicism gaining the upper hand, but the evangelism of materiality is rampant. Lip service is being paid to ideals, which are merely convenient forms of distracting attention from one's selfish pursuits. You must excuse me if I sound cynical, not merely realistic—A Judge often sees the worst, but I do not think that I am distorting reality. Well, if that is our society, unless there is a radical transformation, it will not survive. It does not deserve to survive.

How can this transformation be brought about? Is Law the instrument of Social Transformation? Every politician appears to think so, for Law is the power-

* *Diwan Bahadhur Sundaram Chettiar Memorial Lecture*—Address delivered by Sri M. Ananthanarayanan, I C.S., Judge, Madras High Court, at Sri C. Vijayaraghavachariar Memorial Library, Salem, on 10th December, 1960.

house of sanctions. Any other way seems too arduous, individual and difficult, without that intoxication which the use of power brings. So politicians tend to introduce Bills, which, after three stages, become the Law. But when the social consciousness that has to receive the Law is fretful, immature, too deeply self-ingrained to obey it, the sanctions are not enforced. This implies, that you introduce another Bill to enforce the sanctions. So, the vicious circle of the Law goes on. Should we not take time to think out this whole question, make the juristic analysis, even if it is a little abstract? This is my task. I propose to make no reference to any contemporary events, or a contemporary personality.

Clearly, there are two ways of looking at this picture. One is to assume that 'Social Man' is a conditioned product, absolutely conditioned. I might term it the Marxist or Hegelian Dialectic. If you condition society differently, you get a different social man. Since there is no individual who is objectively real beyond the condition, conditioning creates the perfect individual. If you accept this, Law is *par excellence* the instrument of social transformation. For Law, in modern society at any rate, is the state in its functioning; the state as a working force. If the state conditions absolutely, will it get the perfect social man? In Marxist analysis, it will and must. That is why Marx said that when the socialistic ideal is achieved, the state "will wither away". Those who, temporarily, feel 'out of joint' with this process of rigid conditioning and resist it, will be 'liquidated' unless they conform. Sinister words like 'elimination' and 'liquidation' are part of the metaphysics of Marxism. Because, if you really believe that there is no individual, as a permanent entity entitled to his fulfilment, then why should you be merciful with intractable forms? Perfect society through law rigidly enforced; that is one extreme of our perspective.

The other extreme is Democratic thought. This holds that there is such a thing as an indestructable core of individuality. There is a free, unconquerable individual, who is an end in himself. There is something greater than the body, and the conditionings of thought. Society is only a manifestation of individuals. Society exists for the individual. He is not merely a product to be conditioned, to produce a perfect society. The *Illuminate*, Christ, Budha or another, taught that social transformation is possible only in terms of the individual transformation. Any other transformation is superficial, mechanical, liable to fall away. So they taught that when the individual transforms himself, there is peace, there is order, for society is the reflection of his understanding. Purify his understanding, and you have a perfect society. Law is a matter with which the man of illumination is not greatly concerned. Christ said—"I came not to destroy, but to fulfil." Individual transformation is the fulfilment, far greater than the fulfilments of the Law. None of the *Illuminate* has ever been concerned with the Law as an instrument of social transformation. The Prophet has ever believed in the individual as the focus of social transformation, and Law as a pale reflex of that transformation. Such men are spiritual anarchists, in a true, not a derogatory sense. Christ was one, Gandhiji was one. They turned away from the entire structure of positive Law, I mean Law in the Austinian sense, which involves unpleasant consequences for its disobedience.

We have here these two poles, two opposite poles, of a single perspective of our theory of Law. Is the truth at either pole, or somewhere between them? If Law is at least a subsidiary instrument of social transformation, to what extent can we use it, and rely upon it? What are the rules of the best use of this instrument?

One point is clear. Law is powerless to procure for us the things of the deepest concern in our life. Rabindranath Tagore once said, referring to the possibility of a man creating great literature in a language that was not the mother-tongue of a man that it was like attempting to win the smiles of a wife by a decree for the restitution of conjugal rights. Many of you are lawyers, and know what that means.

You can obtain the decree, enforce it, and get costs, but alas, you cannot get the smile. Because Law ends, where the smile begins. Really, that is so; the smile is something utterly beyond the Law, which, for lack of a better word, we may say is the expression of 'love'. Law cannot, in many ways, touch the deeper springs of life. This has been most beautifully expressed by a modern American poet :—

> "The Law 's our yardstick, and it measures well,
> Or well enough when there are yards to measure.
> Measure a wave with it, measure a fire,
> Cut sorrow up in inches, weigh content."

You cannot measure a wave, because it is moving. Or fire, because it is flaming. The scale of the Law cannot guage sorrow or content, which are immeasurable. Still, we all feel the impact of the Law in our lives. What is its true character?

Here, I would like to tell you something about the theories of Law of two German Philosophers, Stammler and Kelsen. They are often called Neo-Kantian, because the great Kant himself did adumbrate a theory of Law, and both Stammler and Kelson do derive greatly from him. Understanding them, in however brief a measure, will help us to understand the nature of Law as a social force. From there, we can proceed to have a glimpse of those rules of instrumental use, under which the Law functions, or may function, in optimum effect in achieving social change.

What Stammler said was this. Law is not derived from the State, because Law is older than the State. The latter is, in fact, only one type of legal order. Law is a species of binding will. Society may, in fact, be defined as a group of wills which function as ends and means to each other. No juristic claim is valid, save on condition that the person to whom it applies may remain his own neighbour, that is, an end in himself. While being bound, all individuals are still 'ends in themselves.' You see the extraordinary implications of this idea of justice infused into the concept of Law. Law is a congeries of wills; but the wills are those of individuals who are ends in themselves. Law is valid only when it permits them to be or become this. When Law destroys the individual, it is no longer Law. Surely, a very singificant point, for the ethical factor of a judgment of Law, of a just and unjust Law, has crept in now.

Kelsen made a different contribution, from a scientific standpoint. He said that Positive Law was a normative science, as distinguished from natural science. The relationship of cause and effect in Law is not one of causation, but of attribution. If I put my finger into a flame, a burn injury occurs. But if a man burgles a house, we say that he *shall* be tried for the offence. Hence, that is a tendency resulting from an attribution which is characteristic of the normative order. Actually, the offender may or may not be ultimately punished. But, because of a whole system of attributions, he will tend towards trial and punishment. Two features distinguish Kelsen's thought. Firstly such a system of Norms must necessarily involve some foundation. According to Kelsen, this was the Basic Norm or *Ground-Norm*, that the constitution shall be obeyed. Secondly, this totally excludes the ethical element. There is only the pure science of Law. There is no moral or immoral Law.

But the analysis is unreal, from a Behaviouristic point of view. Actually, men never obey the Law, wholly on account of sanctions. Quite a few men obey the Law from fear. But even they recognise its ethical validity; a totally unjust Law will be progressively defied and broken. Law is obeyed from a deep sense of its correspondence with the moral values of the concerned society. That is at least as powerful a motivation, as the sanctions behind the Law.

Those of you who are interested in this topic, and wish to go deeper, might perhaps care to read a paper in which I have tried to analyse the implications that I am now referring to, styled "Legal Philosophy and the Problem of obedience", in the First "Year Book of Legal Studies," Madras State. (Published in the Department of Legal Studies, Law College, Madras).

Now we come to the heart of the subject. So long as men obey the Law, partly out of fear and partly from an ethical consciousness, never wholly from fear nor wholly from a deep ethical acceptance, Law will be a legitimate instrument of social transformation. It will not be the primary instrument, the major causation; but it is there. It is not mere lunacy on the part of politicians to be concerned with the Law, with an available instrument. You cannot tell a politician, "My dear sir, please resign, and please wait. I will go on converting every individual, and bring about an integral change in each man, and thus in society".

I wish to suggest six rules relating to the use of Law as an Instrument of Social Transformation. They are based upon three propositions, or fundamental truths.

The propositions I shall furnish first, for it is from this foundation that a theoretical structure can be validly built. Firstly, legal conformity or obedience is only a partial experience of social organization. The social ethical reality is much greater than legal obedience. Secondly, men, by and large, do obey the Law on the ground of its sanctions. Law is a limited instrument, but an essential instrument of social change. So long as human fallibility and weakness remain, it is a legitimate instrument, within its limits. But beware of the man who desires it as the exclusive weapon, irrespective of the claimate of values; for he is the destroyer of individuals, who will suffer the fate of all tyrants. Thirdly, Law succeeds where it derives its main strength from ethical consciousness. Law fails when it is exclusively, or almost exclusively sanction-based. Law is the instrument of an energy, it is not the energy itself. Moral energy or *Dharma* is the true source of social change, though Law is one of the instruments.

From these truths, six conditions or rules flow as hereunder :—

Firstly, ethical consciousness or *Dharma* must be vitalised in the new direction. You have to do this before bringing in the instrument of the Law. If you begin with the Law, and the energised values are not there, Law will fail. You will be involved in the vicious circle of creating sanctions to enforce sanctions.

Secondly, qualitative studies of social values are essential. These must *precede* the introduction of the new Law. The agencies for such studies are woefully inadequate in our country.

Thirdly, statistical or quantitative studies (Gallup Polls) with regard to the acceptabilities of the new Law or direction of Law, are equally vital for the success of the instrument.

Fourthly, the Law to be introduced must involve the minimum interference with the existing *corpus* of Law. At the same time, it must be effective, and sanction-based.

Fifthly, the machinery for implementation must be pre-planned, and effective. If the human beings break down, the Law will fail, for the simple reason that Law does not behave like electrical energy or a harnessed river; it is never automatic in operation.

Finally, the vicious circle must be avoided, by a progressive amelioration of penalties, at the same time increasing moral energy or *Dharma*.

Law is a power-house. The Private Member of the Legislature, as well as the statesman, are both constantly tempted to draw upon this energy, for it gives them a sense of achievement to make Law. But it is a temptation fraught with great harm to society. For each new Law takes away something from the region of individual volition and fulfilment. Because Law limit freedom, this instrumentation must be restricted. He who takes medicine as his food, cannot be healthy.

To act intelligently in this respect requires, not a community of children who try to think, or a community of people who follow some one merely because he is a leader, but a community of responsible and intelligent adults. If I have contributed in the feeblest measure to the creation of such claimate, my journey here would have been more than worth the while. Thank you, gentlemen.

CONFLICT IN PRIVILEGES OF COURTS AND LEGISLATIVE BODIES.

By

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For efficient functioning with dignity, Courts and the Houses of Legislature should possess powers and privileges of their own. Powers and privileges of Courts can be known from decisions and those of the Houses from their Journals. Coke said[1] that the latter are part of the law and custom of Parliament. In England, both are part of the common law[2] and indeed prerogative of the sovereign is part of it. The Houses of Parliament in the United Kingdom have the power to enforce undoubted privileges. But they cannot create a new privilege in the guise of enforcing ancient and undoubted privilege. The Courts on the other hand claimed the right to ascertain the nature and extent of the privilege claimed by the Houses of Parliament, whenever a question in respect of it has arisen, as part of the common law. If it is a privilege determined by them to be undoubted, the Courts would declare the exercise of it as unquestionable. But the Courts never conceded the right of the Houses to determine and enforce their privileges, nor the Houses conceded the power of the Courts to determine what their privileges are. In England, this dualism still continues[3] and it is not easy to conceive of any method by which it may be resolved.

It is clear that the superior Courts should have the power to punish for contempt. The Houses of Legislature bear analogy in this respect to the superior Courts, in punishing a person for contempt. To define what constitutes contempt, neither the Houses nor the Courts would be disposed to do. Perhaps it is undesirable on their part to do it. In this undefined field, several times there were conflicts between the House of Commons and the Courts, and the House of Commons was particularly sensitive because the House of Lords, in the exercise of the Appellate Jurisdiction, would become the arbiter of the privileges of the House of Commons, if the power of the Courts is conceded.

This conflict is not peculiar to the United Kingdom which does not possess a written constitution. In the commonwealth countries and the United States the position is substantially the same. In punishing persons for contempt for breach of the alleged privileges, sometimes the Courts and often the legislative bodies acted with extreme sensitiveness. Legislatures have the power to change the law, to remove Judges if they think it necessary and also in the last resort to amend constitution. There can be no legal limitations in the ultimate stage upon the powers legislatures exercising constitutent functions. When dictatorship can be made legal and it is possible for the country to be turned into an armed camp and tyranny let loose, to suppose that a House of the legislature cannot exercise the power of contempt, assuming it to be perversely, is disturbing to the ideas prevalent. The power of the Courts is to interpret the law and if the history is examined and truth ascertained, also to make the law. Sometimes the Courts have to stand up against legislatures in protection of rights of the people and at some others to arbitrate between Governments and allocate legislative powers particularly in federal constitutions. If the power of the Courts to punish for contempt is subordinated, the persons discharging the duties might not be able to do without fear or favour. The contempt power is not only a protection afforded to the Court or the House, but it is also a protection to the persons discharging the duties. If the powers of the Courts and the Houses come into conflict, self restraint can only be the protection. Arguments, recriminations and appealing to constitutional provisions serve very little useful purpose. They only aggrevate the position. If the Courts begin to say that Legislature or its agents are corrupt and are under undesirable influence, the

1 Coke's 4th Instituted cited by May in "Parliamentary Practice" p. 60 (16th Edn. (1957).

2. *ibid* p. 47.

3. L.R. 1958 A.C. 331.

legislature can equally say that it is the only business of the Courts to say what the law is. In this conflict, no solution can be found except to counsel moderation to both sides. A page of history, it is said, is better than volumes of logic. If the history has taught us anything, it is that in all serious conflicts either with the executive or the legislature, the judiciary's hand was lower. Only the history proclaimed that the stand taken by the judiciary was correct.

The conflict between the Supreme Court and the Parliament in the Union of South Africa in the recent past established the correctness of the position taken by the Supreme Court[4]. Cool, reasoned and argumentative judgment of the Chief Justice of the Supreme Court was greeted with approbation by the Jurists abroad. The Parliament of the Union attempted by passing the High Court of Parliament Act to deprive the Supreme Court of its finality in judgments on constitutional matters and to assume for itself the powers of the judiciary and the right to set aside the judgments of the Supreme Court. Pursuant to it, the Parliament set aside the decision of the Supreme Court in *Harris* v. *Minister of Interior*[5]. The Supreme Court declared the statute invalid and restored its own decision. It must be said to the credit of the Judges that they did not care to be popular even with the majority of their community.

When the successful plaintiff in *Stockdale* v. *Hansard*[6], applied for execution of the decree given by the Court, the Sergeant-at-arms acting under the authority of the House of Commons had taken the sheriff and the solicitor for plaintiff into custody. The warrant simply contained a statement saying that the persons were guilty of the contempt for breach of privileges of the House. The warrant did not disclose the true state of facts. The position of the Court of Queen's Bench was that it has to determine the validity of detention which resulted in the process of execution of its own decree. Lord Denman, C.J., said[7]:

"On the motions for a *habeas corpus*, there must be an affidavit from the party applying; but the return if it discloses a sufficient answer, puts an end to the case; and I think the production of a good warrant is a sufficient answer. Seeing that, we cannot go in the question of contempt on affidavit, nor discuss the motives which may be alleged. Indeed (as the Courts have said in some of the cases) it would be unseemly to suspect that a body under such sanctions as a House of Parliament, would in making its warrant, suppress facts which, if discussed, might entitle the person committed to his liberty. If they ever did so act, I am persuaded that, on further consideration, they would repudiate such a course of proceeding. What injustice might not have been committed by the ordinary Courts in past times, if such a course had been recognised; as, for instance, if the Recorder of London, in *Bushell's case* (1870) Vaugh. 135 had, in the warrant of commitment, suppressed the fact that the juryman were imprisoned for returning a verdict of acquittal. I am certain that such will never become the practice of any body of men amenable to public opinion."

It can thus be seen that the public opinion is felt to be the ultimate sanction against the excesses done by the Legislature as well as by the judiciary. In this case the House of Commons acted with a strong hand and the Queen's Bench expressed its helplessness.

The executive acted sometimes in disregard of the decision given by Courts. When the Chief Justice of the United States Supreme Court ordered the release of Milligan on a writ of *habeas corpus*, the executive did not give effect to the decision. The Chief Justice was to content himself with a letter addressed to the President reminding him of the oath he had taken to abide by and enforce the constitution.

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4. See "*The Coloured vote case*" *in South Africa by* Dean Griswold, 1951 Har. L.R. 1361. *The Demise of the High Court of Parliament in South Africa by* Dean Griswold, 1952 Har. L.R. 864.

5. (1952) 2 South Africa L.R. 428.

6. (1839) 9 A & E. 1.

7. *In the case of the Sheriff of Middlesex* (1840) 11 A & E. 273 (292) : 113 E.R. 419 (420).

In spite of the reminder, Milligan was not released for about one and half years. Lincoln's action in this case passed on for patriotism even.

On an application for a writ of *habeas corpus* filed before the Bombay Supreme Court in 1828[8], it issued a rule *nisi* and required a return to be made. The Government of Bombay not only not complied with the direction of the Court but addressed a letter through the Chief Secretary pointing out the undesirability on the part of the Supreme Court to interfere in the delicate matters involved in the case. The Supreme Court thought it necessary to close down the Court and petition to the Privy Council.

In the recent times, we are aware of the waves of commotion caused by the decision of the American Supreme Court in *Brown* v. *Board of Education*[9]. It is very doubtful still as to whether the decision is fully complied with. Every attempt is being made by a section of the people, although a negligible minority, not to give effect to the decision to its full extent. When Marshall, C.J., has given the decision in *McCulloch* v. *Maryland*[10], he was threatened to be impeached. The principle contained in the decision is vindicated by the decisions of Courts in other countries nearly a century later.

In inference it may be said that the Judges should render opinions without fear or favour not caring for the public opinion even. If for the time being the legislature or the executive flout their authority, on account of the inherent correctness recognition would be accorded by coolermen in settled times. That is the only reward for unassuming labours of Judges. If Judges attempt to retaliate the executive or legislature by invoking their power to punish for contempt, in the unequal contest they are likely to be exposed to a greater contempt of their authority. They are unequal in the contest because even if they are thoroughly honest and absolutely correct they cannot say anything in their own defence except in an extremely subdued was in a case pending before them. The following passage may be usefully read in this connection.

"While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country."[11]

It would have been all the more dignified if the learned Chief Justice did not answer the suggestions made in some quarters. Thoughtless suggestions are being made and will continue to be made. Contemptuous disregard of them is the only answer. Loquacity is not a virtue for a Judge. But it is not so for a legislator or a Minister. Judges are at a disadvantage in a contest on this plane. Legislator is not elected on account of the depth of his learning, but the popularity he possesses made him occupy the position. If he possess other qualification, it is extraordinary. He is essentially a politician. Consistency, adherence to truth, decorous conduct or an unequivocating behaviour are not legally required of him. On the other hand, certainly the judges of the superior Courts should invariably possess at least these qualities if they have to discharge their duties with respect and distinction. The conduct required of a judge can be known from tradition and the Code evolved by unbroken practice. Wisdom and non-partisanship are expected of them. If legislators or executives are corrupt or guilty of nepotism and favourtism, it is excusable. If the judges are intemperate it is reprehensible. In matters of privilege either of their own or of the Houses, the less the sensitiveness the judges show, the greater the admiration they are entitled to command. It cannot be construed as failure to exercise powers vested in them. It is the result of a realisation of stark reality that in a contest between the wise and more numerous, the latter's word is the more vociferous.

8. *In re*: The Justices of the Supreme Court of Judicature (1829) 1 K. 1.
9. (1954) 347 U.S. 483: 98 L. Ed. 873.
10. (1819) 4 Wheat 316.
11. *State of Madras* v. *V. G. Row*, (1952) S.C.J. 253: (1952) 2 M.L.J. 135: A.I.R. 1952 S.C. 196, 199.

It is exactly for this reason, judiciary is said to be the weakest branch of the Government.

Sometimes judiciary has no choice except to support the action of the legislature or of the executive. Putting a seal of approval to the Hindu Woman's Right to Property Act and the Constitution First Amendment Act may be taken as illustrations. When the Governor-General of Pakistan dissolved the Constituent Assembly, the Federal Court of that country had to acquiesce in it. When considered in abstract and taking the Indian analogy, it would be impossible to conceive of the dissolution of that body as legal. President of the United States purporting to act under his military power, caused the removal of American citizens of Japanese origin from the West Coast to the interior and seriously restricted their movements. The Supreme Court of the United States has given its consent to these executive or military acts.

Can it be said that our Constitution has removed the possibility of conflict in the matters of privileges between the Houses and the Courts? Article 121 for instance, places a bar on the power of the Houses of Parliament to discuss. It says,

"No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in discharge of his duties except upon a motion for presenting an address by the President praying for the removal of the Judge as hereinafter provided."

The prohibition placed on State Legislatures appears to be more decisive. Article 211 says,

"No discussion shall take place in the legislature of a State with respect of the conduct of any Judge of the Supreme Court or of a High Court in the discharge of duties."

No doubt the provisions appear to be widely worded. But the protection they afford appears to be limited. It does not appear that the State of law as laid down by the decision of a High Court or of the Supreme Court cannot be taken note of by the legislatures. Legislatures certainly can take note of the law existing and if necessary may amend the law. If a legislature has no competence to amend, it may suggest amendments. What the provision probably means is that a Judge should not be identified with the Judgment and singled out for discussion. If he is so identified, discussion assumes a personal character and it may very often deter honest men from discharging duties. But if we begin to qualify and interpret the provisions, it is difficult to conceive of methods by which the actual difficulty may be got over.

Apart from the difficulty of laying down as to when the conduct of a Judge is said to be discussed, the question as to when can it be said that it is 'in discharge of his duties' is one of equal difficulty. Should the expression be construed in the same way in which similar expressions under section 197 of the Criminal Procedure Code and section 240 of the Government of India Act, 1935, were construed? If so, as the Judicial Committee pointed out[12], the taking of bribe for instance, as an inducement for judgment delivered cannot be in discharge of duties. In such case discussion on that question may take place. But delivering of a judgment is. If once discussion on judgment is permitted, in a body dividing on party lines, it will soon degenerate into personal attacks in heated times. Suppose a person while remaining as a Judge, discharges the duties of a supplementary character not pertaining to the office of a Judge, it is difficult to conceive the provisions as extending the limits of protection. An attack made against a person in respect of duties of an incidental officer certainly reflect upon the conduct of a Judge. A Judge may become liable to attack for moral delinquencies as well. If one is prepared to go to the extent of saying that every kind of discussion is prohibited, the provision places an absolute bar on State legislatures. Such construction of Article 211 leads to the position that State legislature cannot even put the machinery in motion for the removal of a Judge. If a Bar Association can pass a resolution suggesting the removal of a Judge and an Advocate-

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12. *Gill* v. *The King*, L.R. 75 I.A. 41 : (1948) 2 M.L.J. 6 : (1948) F.L.J. 13 : 1948 F.C.R. 19 : A.I.R. 1948 P.C. 128.

General or the Attorney-General can move towards the same end, to say that the Legislature of a State has no power to do it is illogical.

It is the highest interest of Government and legislatures to render voluntary obedience to the decisions of Courts before they require people to abide by the decisions. Supposing that the legislature deliberately in violation of Article 211 indulges in discussion with respect of the conduct of a Judge. No means to compel the legislatures to obey the provision seem to be available. A writ cannot be issued against the legislature. Punishing a Member for what he spoke in the House is equally unthinkable. If it is so attempted, we have to go back to the days when members of the House of Commons were punished for what they expressed in the House[13]. It is against this position, the House of Commons struggled for a long time resulting in passing of the Bill of Rights. It laid down that "the freedom of speech and debates or proceedings in Parliaments ought not to be impeached or questioned in any Court or place out of Parliament." The same position is to be adopted in India in construing Articles 211 and 121 not because the Bill of Rights provided it, but on account of the impossibility to otherwise enforce the provisions. Thus understood the articles contain provisions which are in the nature of self-imposed restrictions. There are several provisions in the Constitution for the violation of which there seem to be no remedy except one of the political nature. For instance, the Constitution says, that the Houses of Parliament should be summoned by the President at least once in six months[14]. If the President fails to do it, no Court can compel him to summon. The remedy is only political. Any other view of the matter would bring the Courts and the legislatures into conflict. No useful purpose can effectively be served. Indeed it is better to recognize the limitations of the Courts than to allow the Courts to declare law which it is not in their power to enforce. Creating a gulf between theory and practice of law is to be avoided in all cases possible. This is the situation if the Courts merely declare law and leave its enforcement to the legislature.

Sometimes it is suggested that the Speaker might draw the attention of the offending member to the provisions of Articles 211 and 121. Even the Speaker might be helpless in times of emotion. In any event he cannot object until the mischief is done. Against a determined effort either to violate the provisions or an attempt to seemingly comply while in effect violating them, there is no remedy. Sooner or later this fact has to be acknowledged. For the holders of the highest offices, their conscience can only be the restraining factor. Legislators and Judges in their respective spheres are the holders of the highest offices.

Sometimes it is argued that Court can issue a writ against the Speaker or presiding member directing him to enforce order in the House pursuant to constitutional provisions. Articles 122 (2) and 212 (2) lay down that an officer or Member of Parliament or legislature of a State "in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers".

Again the twin questions are :—

(1) What is the meaning of 'in respect of the exercise by him of those powers'?

(2) Who is the final judge, is it the legislature or the Court?

Prudence and inevitability lead us to accept that the legislature is the final Judge in its matters. This acceptance does not arise out of conviction that the legislatures will always be just. There is no other choice in the matter. If a House of the Legislature acts perversely or illegally as in the case of the Sheriff of Middlesex, there is no remedy. Taking an extreme case into consideration let us suppose that a House of the Legislature directs that a Judge of the High Court should be taken into custody

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13. See the "Account on Freedom of Debates" given by Chafee on the Bill of Rights in Three Human Rights in the Constitution of 1787.

14. *Article* 85.

for an alleged breach of the privilege without giving any further detail. It is difficult to imagine a remedy. A Court is bound to give reasons for its decisions. But a House is not bound. Lord Ellenborough said in *Burdett* v. *Albert*[15] as follows:

"If a commitment appeared to be for a contempt of the House of Commons generally, I would neither in the case of that Court, nor of any other of the superior Courts, inquire further ; but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the Court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law, or national (*natural*?) justice ; I say, that in the case of such a commitment (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur) we must look at it and act upon it as justice may require from whatever Court it may profess to have proceeded."

A Court of Record may commit a member of a House or a House may commit a Judge for contempt. As suggested by Varadachariar, J., in arguments before the Federal Court in *Gauba* v. *Chief Justice and Judges, Lahore*[16], Federal Court might commit a Judge of a High Court and probably also High Court might commit a Judge of the Federal Court for contempt. There seem to be no legal limitations on these powers. But in the world of reality, self-restraint and public opinion are the operating factors.

There was a tendency to stretch the law of contempt in India. The more reasonable position seems to be not to invoke the law of contempt except for matters of removing obstructions. An institution like Court of Record or Legislature cannot easily be defamed. Persons discharging public duties, should not be hyper-sensitive to the public criticism. The offices they hold involve performance of acts of public nature. Therefore there will be criticism and reaction whenever injustice is felt rightly or otherwise. Criticism opens the valve to give vent to feelings which otherwise become repressed. Repressed feelings are always a source of disorder. In *Bridges* v. *California*,[17] Balck, J., said:

"An enforced silence, however limited, solely in the name of preserving the dignity of the Bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

In that case the Supreme Court of the United States declined to enforce the provisions of a California statute enabling punishment to be imposed for expressions amounting to contempt short of 'clear and present danger.'

In *Boucher* v. *King*[18], the Supreme Court of Canada had taken a liberal view of the law of contempt of Court. It said that if the criticism is so repulsive to the public sentiment, prosecution under the law may be initiated.

Our respectful submission is that it is better for the Courts to leave to the Houses to Judge exclusively what transpires within the House. No House should consider this privilege as one to shield an offender. In suitable cases Houses should not hesitate to waive their privilege and allow the offender to be dealt with under law. The Houses should also make it an inflexible principle that they should not cast any reflection either on a Judge or on a Judgment. It is not in their interest to do it. It is more enlightened on the part of the Courts as well as House of legislature not to proceed with cases of contempt except in extreme cases. If necessary prosecution may be directed to be launched under law.

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15. 14 East ·, 150 and 151 : 104 E.R. 558, 559.
16. (1942) 1 M.L.J. 74 : (1941) F.L.J. (F.C.) 33 : (1941) F.C.R. 54 : A.I.R. 1942 F.C. 1.
17. 314 U.S. 252, 271.
18. 1951 S.C.R. 265 (Canada.)

CONVENTION AND THE INDIAN CONSTITUTION

By

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The Constitution of the Sovereign Democratic Republic of India is a written Constitution, unlike the British Constitution which is a product of conventions established by centuries of practice between different Heads of the Executive and the Crown, the enacted part of the Constitution in Great Britain being comparatively small. Conventions in Great Britain arose as a result of historical traditions suited to the genius and habits of the people, and were mainly the result of a compromise arrived at between the King and Parliament, after a protracted struggle for power between them. They were adopted by the people of Great Britain, and they modified the enacted parts of the Constitution which are comparatively small.

Here in India, there has been no such struggle between the President and Parliament, and the relations between them are smooth. This cordial relationship between the President and Parliament must have a large bearing on the way that each one behaves towards the other, and the idea of running the Government of India more efficiently is more predominant in their minds than the idea to seize power, or to share it in larger proportion.

Growth of conventions, strictly so called, is the result of historical accident in Great Britain, and its analogy cannot be wholly applied to Indian conditions. Probably it is as a result of this difference in outlook, that the Indian President's Orders or Rules need not be countersigned by a Minister under the Indian Constitution as in England, and the President himself has rule making powers and allocates portfolios of Ministers, which is done only by the Prime Minister in England. There are some more powers of the Prime Minister in England which are exercised by the President under the Indian Constitution.

Before 1947, India was having a Constitution superimposed by the Parliament of Great Britain, and it was only after Indian Independence, that the Constituent Assembly of India resolved to constitute India into a Sovereign Democratic Republic and gave the people of India by its Preamble a Written Constitution which was adopted and enacted by them. Thus in form and substance, there is only one Constitution of India, the Written Constitution. There is no question in India therefore, of having one "Enacted Instrument of Government" and another "Adopted form of Government" as in the Constitutional Monarchy of Great Britain, or in the Constitution of Canada. The Preamble clearly says "Hereby Adopt and Enact *This Constitution*". Under Article 393 of the Indian Constitution, It is *this* Constitution, which may be called "The Constitution of India".

The question of conventions, strictly so called, has therefore been relegated to the background, as the written Constitution is meant to cover the entire field of Constitutional activity, and whatever practice or usage was contemplated for regulating the relations between the several organs of Government, was more in the nature of working rules, rather adopted more for keeping up the efficiency of running a Cabinet system of Government with collective responsibility, than for defining the powers of the respective organs of the Government, and so, such practice or usage has been neither psychologically, nor legally raised to the status of conventions as in Great Britain. While conventions become inflexible rules by long established usage in an unwritten Constitution like that of Great Britain, as a result of compromise arrived at between the King and Parliament, the practices adopted in a written Constitution like India's, where there is no such struggle for power between the President and Parliament, cannot have the effect of abdication of Statutory duties imposed on the Executive of India by a written Constitution, as India is a Republic and not a Constitutional Monarchy, and the Executive derives its authority in a Republic from express grant of power alone.

The Preamble, Articles 53, 73, 368, 375, and 393—all refer to "*This* Constitution", and so the written Constitution alone is the final word, and there is no object served in seeking its interpretation from outside sources unless there is latent ambiguity in the words of the Constitution. The Indian Constitution does not make any reference to the debates in the Constituent Assembly for reference to elucidate the intention, and therefore reference to the Constituent Assembly debates may be made only in circumstances where there is latent ambiguity in the written words in order that they may be cleared. This has been the English practice, and the opinion of the Supreme Court of India also.

The Constituent Assembly of India, though a Sovereign body, was not a body elected or selected on a broad based representation of the people of India or its interests, but was a body composed of those competent to frame a Constitution of India. The validity of the Constitution framed by such a body rests on subsequent acquiescence and ratification by the peope of India, and the statement of any person in the Constituent Assembly cannot be said to be the statement of a person representing the whole of India, and its people at the time it was made, in the strict sense of electoral representation. Therefore it will not also be proper to say that the written part of the Indian Constitution which has been subsequently ratified by the whole of India could be modified by the individual statements of members of the Constituent Assembly. As the entire Constitution of India rests on subsequent acquiescence by the people of India for its validity, it is only the Written Constitution, adopted and enacted by the people of India that would stand the test of acquiescence, and it will not be strictly constitutional to attempt to modify the written word of the Constitution by statements of individual members in the Constituent Assembly. Nor could it be predicated that the entire body of the Constituent Assembly were *concensus ad idem* on all the points discussed, and there was only one view of the Constituent Assembly on the point.

The British Constitution as a result of convention, has made a distinction between the Real Executive and the Nominal Head of the Executive. The King reigns in England but never rules, as the Parliament of Great Britain is Supreme, and the King is bound by the advice of the Cabinet. That has arisen by convention, as the Constitution of Great Britain has adopted a form different from that of pure monarchy. Such a difference between the Nominal and Real Executive, is possible only in an unwritten Constitution governed by conventions, and it is not safe to apply the analogy totally to India, which is a Republic, and has a written Constitution, and is a Federal Union with checks and balances.

In India, the Constitution governed by the Government of India Act of 1935, contained the provision that the Governor-General of India was to be aided and advised by a Cabinet of Ministers, and the Instrument of Instructions to Governor-Generals and Governors contained the provision, that the advice by the Ministry was binding on them. That rule was given up by the Constituent Assembly of India, who merely provided for ministerial advice under Article 74 of the Constitution, without any Instrument of Instructions of a binding nature.

That fully shows, that the relations between the President of India and the Cabinet, as well as the Governors and the Cabinet is left to be governed by rules framed for the sake of efficiently running a Cabinet system of Government with collective responsibility but not of a binding nature as conventions in England, as the idea in India has never been to define or delimit anybody's power. The flexibility imported into the working of the Executive in India, by not inserting a binding provision for ministerial advice in the Constitution itself, is also a result of the necessity to have the Executive Head in India to be above party politics, and not to identify him always with the majority party, as the Federal system in India is composed of checks and balances and the presiding Executive has to keep up the balance evenly between the scales.

While in normal cases, the President of India would respect the advice tendered by the Ministry, such a practice cannot make him abdicate the Statutory powers under the Constitution, but such powers, while being dormant in actual practice, will revive in cases where the President feels, that the working of the Constitution requires a corrective, and an emergency has arisen when, without his interference, the Constitution will stand the risk of violation or jeopardy, as the President is bound under Article 60 of the Constitution to preserve, protect and defend the Constitution and the Law.

The Indian Constitution, therefore, has in a large measure departed from the British North America Act where the Governor-General was bound by the advice of the Ministry, because the Preamble of the Act contained a provision that the Constitution is similar in principle to that of Great Britain. The Preamble of the Indian Constitution does not contain this phrase, but on the other hand, makes it specific that the "Adopted" and the "Enacted" Constitution are one and the same *i.e.*, " *This Constitution* " or the Written Constitution.

The powers of the Executive, therefore, in India are governed by the written word, in strict Constitutional Law, and violation of the Constitution in India is only violation of the written word, as by Article 393 " This Constitution may be called *The Constitution of India* ". There is no mention of the word ' Convention ' in any part of the Constitution, either in the definition or in the explanatory chapters. So the Executive in India are having Cabinet Government by the written words of the Constitution alone. In the result, while in normal cases, the President or Governor has to follow the advice of the Ministry in order that the system of collective responsibility may work efficiently, the discretion of the President in emergency situations has not been taken away.

In fact without such powers in the President, the Country could not be properly defended, and the rights of minorities could not be properly safeguarded.

To sum up: India is a Republic and a Federal Union. It has a written Constitution. It is not Constitutional Monarchy as in England where the entire system of Government is unwritten, and built on conventions. Here in India, the entire Constitution is in written form. The relationship between President and Parliament is wholesome and smooth. We should be on the guard in trying to apply, our notions of the binding nature of conventions gathered from a study of a monarchial form of Government as in England, which depends merely on conventions for becoming responsible Government, *pro tanto* to India, which is a Democratic Republic, and having a written Constitution with a President elected on a broad basis having Statutory obligations, in a Federal Union, with checks and balances. The analogy of British conventions is not fully applicable therefore to India and a *via media* alone can prevail.

BOOK REVIEW.

A COMPARATIVE STUDY OF THE INDIAN CONSTITUTION by Sardar D. K. Sen, M.A., B.C.L. (OXON.), BAR-AT-LAW. Published by Orient Longmans Private Ltd. (1960).

It is over a decade since the Constitution of India has been put on the Statute-book and many of its provisions, notably those relating to the Fundamental Rights, have been put to rigorous test on the touch-stone of the Judiciary. The Supreme Court of India and the several State High Courts have been interpreting its provisions and the powers that be have been facing the inevitable divergence between law and social justice in several spheres. To bring the Constitution in line with their objectives and policy, it has been amended often—too often according to several critics. Be that as it may, there could be no two opinions that the Constitution of India is a unique Charter, blending as it does the finer aspects of the constitutional principles of several countries great or small. The architects of our Constitution and the Constituent Assembly of India drew inspiration from various written Constitutions of the past and the unwritten British Constitution. By and large they have admirably succeeded in weaving the several heterogeneous elements into a homogeneous whole though in the light of its practical working and the experience gained it had to be moulded here and there.

A comparative study of such a Constitution is not only welcome but is a necessity. A handy volume of reference of such comparative study is bound to be of great value to lawyers, judges, students and parliamentarians.

The book under review is the first of a series of three volumes dealing with the provisions of the Constitution of India. It is not a mere commentary or notes on the several articles of the Constitution. It is a critical and liberal study of its provisions, in the back-ground of its history and growth and in the light of the leading decisions of the Supreme Court of India and the several High Courts. Topical headings and rules of interpretation are new features of the work and the appendices and bibliography at the end enchance the utility of the book. The author of this welcome thesis is eminently qualified for the task he has undertaken. With his rich experience in the academic, political and administrative spheres, he has brought to bear great industry and learning in the production of this very useful study and deserves the praise and gratitude of lawyers, students of constitutional law, jurists and politicians.

RETIREMENT OF THE HON'BLE SRI JUSTICE P. RAJAGOPALAN

Most precious to civilisation is justice. The one institution in the country of which, taken as a whole, one feels a sense of pride is its judiciary, particularly at its higher levels. More streams than one supply the Judges of the High Court. The Indian Civil Service has been one such channel and has given to us a number of eminent Judges. In the ranks of the truly great is Justice P. Rajagopalan. Having served as a Judge of the High Court for more than 13 years since April 5, 1948, and having acted as the Chief justice twice during that period, once in 1957 and again recently, he has just retired.

Justice Rajagopalan had a distinguished academic career. He took the B.A. (Honours) Degree from the Presidency College with History, Economics, and Politics as his subjects in 1922, and two years later while in England he took the Tripos in History from the Queen's College, Cambridge. He passed the I.C.S. competitive examination creditably in 1923 and was appointed as a member of that service the next year in the Revenue Department. He served in various districts, and in 1933 became a member of the Judiciary as a District Judge. He served in that capacity for 15 years and was then elevated to the High Court.

His reputation as a Judge was very high indeed even when he came to the High Court. He was held in great esteem for his judicial qualities—efficiency, integrity, courtesy and balanced reasoning. During the years that he has been a Judge of the High Court he has been viewed with mounting appreciation. Patient and receptive to arguments, conscientious and thorough in investigation of both facts and law, sound in regard to his conclusions his work has been hailed with satisfaction. He has dealt with all types of cases, civil, criminal, original and appellate. Whether it was a case of taxation law, or a matter relating to an industrial dispute, or a question of land tenures or of the constitutional validity of a statutory provision, or of procedural law, he has been equally at home. He was fully aware that knowledge should precede understanding and understanding should precede judgment. The atmosphere of his Court was always pleasant and there was the feeling that every case had received a full and fair consideration. His judgments were luminous and his style satisfying.

The pages of the Law Reports afford eloquent testimony to the range and quality of his judgments. He dealt with a number of important mutt cases like those relating to the Shirur Mutt, (1952) 1 M.L.J. 557, the Puthige Mutt, (1956) 1 M.L.J. 532, etc. His Judgment on behalf of the Full Bench in *Ayyan Ammal* v. *Vellayamma,* (1956) 1 M.L.J. 225 holding that section 95 of the Transfer of Property Act as amended in 1929 is not retrospective shows that he is no worshipper of mere logic divorced from other considerations. In *Krishna Iyer* v. *State of Madras,* (1956) 2 M.L.J. 179, he declared that the existence of effective alternative remedies is by itself no bar to the exercise of jurisdiction by the High Court under Article 226. In *Estate of Md. Oomer Sahib* v. *C. I. T., Madas,* (1957) 2 M.L.J. 320, there is a luminous exposition of the meaning of the term 'association of persons' for

purposes of section 3 of the Income-tax Act. In *Abdul Azeez* v. *C. I. T., Madras*, (1957) 2 M.L.J. 421 he states with force: "It is certainly not the right of any one, fundamental or otherwise, to contend that taxes lawfully due should not be levied and collected. The agent of a non-resident principal accepts that agency with the full knowledge, that if the non-resident principal derives profits, that income would be liable to be assessed under the Income-tax Act". In *Nathella Sampathu Chetty* v. *Collector of Customs*, (1959) 2 M.L.J. 35 there is a brilliant analysis of the implications of section 178-A of the Sea Customs Act and its repugnance to Articles 19 (1) (*f*) and 19 (1) (*g*) of the Constitution.

Justice Rajagopalan has also taken on more than one man's burden in regard to the administrative work of the High Court and other allied matters. He was a member of the Rules Committee of the High Court from 1948 and its President in 1956, and in that capacity he was responsible for the finalising of the Revised Appellate Side Rules. As Judge in charge of the scheme for the separation of the Judiciary from the Executive he achieved the compilation of the Manual of Instruction for the guidance of the Stipendiary Magistrates. He was also responsible for introducing into the areas transferred from the Travancore-Cochin State to the Madras State the pattern of working in the judicial department of the latter State. He also initiated a system of having annual discussions with the District Magistrates in the High Court relating to the administration of justice and its problems.

Justice Rajagopalan has left his mark on whatever task he undertook. In his retirement the High Court loses an able and good Judge. It is to be hoped that his rich and wide experience will be available in the cause of the country for a long time wherever needed. He carries with him the esteem and goodwill of the members of the Bar and the Public.

S. VENKATARAMAN.

THE ADVOCATL-GENERAL'S FAREWELL ADDRESS.

A farewell function was held in the Second Court Hall of the Madras High Court on Friday the 28th April, 1961, on the eve of the retirement of His Lordship Sri Justice *P. Rajagopalan*. The Advocate-General (*Sri V. K. Thiruvenkatachari*) delivered the following Farewell Address to His Lordship.

MY LORD,

We wish to say farewell to you to-day on your retirement after thirteen years as a Judge of this Court.

You had served as a District Judge in many Districts before you became a Judge of this Court in 1948. Your reputation as a Judge was very high indeed even then. Every day of your tenure in this Court you have only enhanced that reputation.

In this Court you have dealt with all branches of work, criminal, original and appellate civil, writs, revenue cases and special Tribunal work. To the adjudication of every type of cases, special contribution has been the impress of an orderly mind. The facts of the case were investigated by you with a thoroughness which was often troublesome to counsel, speaking at least for myself. Equally you were a hard task-master in the investigation of the law on every topic Your passion for arriving at the right judgment was such that quite often you adjourned cases to help Counsel

to study the matter further. In the result there was a confidence that every case received a full and fair consideration and a conclusion into which you as a Judge put in a part of yourself; sparing yourself no pains. Making no comparisons your approach is something which the Bar will remember and hope for.

The atmosphere of your Court has always been pleasant. Indeed your uniform patience and courtesy in all circumstances have left an unforgettable impression on the Bar.

You have shouldered more than one man's share in the administrative work of the High Court. You have taken keen interest in the training and guidance of Munsifs, Magistrates, Assistant Public Prosecutors and other cadres of the service. In this Court itself, the various offices owe a lot to your supervision and advice. In the Rule Committees you have left the impress of your detailed attention. Selfishly, we shall miss you in this Court. We wish you well in your retirement.

Sri Justice Rajagopalan's reply to "The Farewell Address."

MR. ADVOCATE-GENERAL AND GENTLEMEN,

I am very very grateful to you for the exceedingly nice words which you, Mr. Advocate-General, as the spokesman of the Bar have addressed to me on behalf of those assembled here this afternoon to bid me farewell. Mr. Advocate-General, we have known each other for over forty years now, and during the thirteen years I have been on the Bench of this Court and long before that it has been my privilege to be admitted to the intimacy of your friendship. When I heard you this afternoon praising my poor services on the Bench in such generous terms I could not hlep feeling that you remembered our friendship more than your official position as the head of the Bar which should have required you to be dispassionate and critical in your judgment., and let your affection for me overweigh your judgment. It was your heart and not so much your intellect that obviously dictated what you said. I am very grateful to you for all that you said, conscious though I am that I deserve only a small fraction of it.

Allow me to convey to the Bar through you my gratitude for all the unstinted help that I received from the Bar during all these years it has been vouched to me to serve in this exalted position. After I took charge of my office thirteen years ago, on the first occasion I sat alone I appealed to the members of the Bar then present (Mr. Narasaraju) for help and I said that I intended to rely on them for guiding me in the work with which I had been entrusted and in discharging my functions in accordance with the oath of office which I had sworn, and I expressed my hope that that help would be forthcoming. I may acknowledge my deep debt of gratitude for that help which the Bar has readily given to me all through. It is little that a Judge can achieve, whatever his initial equipment might be, without the help of the Bar, and to me who came with very little equipment and with no academic qualification, your guidance was most valuable all through. To adapt the words of Bernard Shaw, the prayer of every Judge could be " If I am on the right path, let the Bar help me to stay in it; if I swerve, let the Bar lead me back to it." The traditions of the Madras Bar have been such that that duty of the Bar has always been discharged, and I am confident that my colleagues and my

successors will have the same benefit which I have had, and that the noble traditions of this Bar will be kept up.

I do not propose to deal at any length on the responsibilities of the Bar to the country under our Constitution in the independent democratic set up of the Parliamentary type we have chosen. The contribution of the Bar and the individual members of the Bar in the struggle for political freedom was considerable, and in most places the Bar became politically suspect in the eyes of the foreign Government. Even if that is apt to be forgotten now in the changing pattern of politics, the Bar and the lawyers have still a great part to play in maintaining and preserving all that is best of the political and economic freedom guaranteed by our Constitution. The pattern of litigation is also changing, and the Bar with its aptitude has readily adjusted itself to the present needs. Achievement of independence does not eliminate all possibility of conflicts between the State and the citizen. I wish that is realised more readily all around and the Bar is given the place that is due to it in the preservation of the high ideals of democracy. In our Welfare State with its Socialistic ideals, the lawyers' duty is not confined to Courts of law alone, and their help should be sought in every one of the fields in which the citizen feels the impact of the State. The lawyer's right to assist and the citizen's right to avail himself of that assistance should, in my humble opinion, be in no way fettered and shackled. Certainly, there is no basis for any distrust of the lawyer. Whether law is administered by Courts or by Tribunals or by Executive Officers the need for the lawyer and his services and his assistance are the same, and I hope that that will be realised more and more by the other two wings of the State, the Legislature and the Executive. However unsatisfactory the present position might appear to be in some respects, I am quite sure of the future of the Bar; it will occcpuy a much higher position than it had under the British regime.

Permit me to refer to one of the responsibilities of the Bar. It has to contribute its best to fill the judiciary at all levels. The judiciary of the country is what the Bar contributes to its personnel and it makes of them. I do not claim that recruitment to the judiciary at the lower levels has always been designed to attract the best talent available. I commend for your consideration the recommendations of the Law Commission and it is up to you to see that they are implemented. Irrelevant factors should be eliminated and the best available candidates should be selected to man the judicial posts. At the higher level, the claims of the Bar and the claims of the services have to be adjusted, and my humble opinion is that neither should be excluded. One thing I would earnestly entreat you to remember. Except for a few like me—relics of the past regime—members of the subordinate judicial services will be recruited from the Bar, and no one should forfeit his claims for advancement merely because he entered judicial service at a given level. If I am pressing the claims of the services it is certainly not to the detriment of the lawyers or to law. Eminent examples, to name only two of the members of the services that adorned the Bench, are Sir C.V. Kumaraswami Sastriar and Sadasiva Ayyar. I do not think that the fact that they chose to enter the High Court through the services in any way disentitled them to the highest prestige in which they are still held. Let us hope that there will be many more of that kind from the services now and in the near future. Forgive me if I took this occasion when we have met here to review

the past, principally my past, to think aloud, and that thinking was typewritten and on paper. Once again let me thank you for all the help that I have had from you. My work in the Court tended to become specialised of late and if in that special field I was not able to help the junior members of the Bar as much as I would have wished to do, believe me it was lack of opportunities and not lack of will or interest on my part. I trust the juniors will forgive me, and that every one of them will accept my best wishes for his success at the Bar.

Just as I have been lucky in securing the support and esteem of the Bar, and may I add with your permission, your affection, I have been singularly fortunate in the help I have received from my colleagues on the Bench, both on the judicial side and on the administrative side. To my Lord, the Chief Justice, I owe a deep debt of gratitude which I can never hope to repay. It was on his recommendation that I was appointed to the Bench in 1948. Ever since then he has treated me more as a close friend than as a colleague. If I was able to achieve anything at all on the administrative side, all the credit should go to him, for without his unfailing held and advice I could have achieved nothing. Though it might appear invidious to make any distinction between the colleagues with whom I was privileged to sit, I should be failing in my duty if I do not acknowledge the benefit, I hope it was an enduring benefit, that I obtained from my close association with Satyanarayana Rao, J., Rajagopala Ayyangar, J., and Balakrishna Ayyar, J. Satyanarayana Rao, J. and Rajagopala Ayyangar, J. treated me like their younger brother and I always looked to them for guidance and help. I trust that my present colleagues will forgive me if I do not mention any of them by name. To every one of my colleagues during these thirteen years I offer my thanks. I shall be ever grateful to them.

May I on this occasion refer to the valuable services rendered by the subordinate judiciary? It was during my period of office that the scheme for separation of the judiciary from the executive was launched and completed in the course of five years. The magistracy was brought under the control of the High Court. To-day, we can claim that our magistracy is probably the best in India and the standards that now prevail are much higher than those we were able to obtain before the separation. I could claim that because I was on the other side myself. On the civil side also, the high traditions built up in the past have been maintained, though here and there, there might appear to be accumulation of work belying our claim that administration of justice is speedy in this State without detriment to its soundness and completeness. It is really the high sense of duty that prevails among the members of the judiciary that has helped to prefer and sustain the claim that our judiciary is still the best we have in this country, and that it can challenge comparison with any in the countries with similar traditions of the rule of law and administration of justice. I have already referred to the recruitment of the members of the Bar to the subordinate judiciary. Mr. Advocate-General, you pointed out that the interest of the High Court in giving training to those selected, in giving them every possible help to ensure that their service in the judiciary is as it ought to be. I am sure the future of the subordinate judiciary in this State is very bright.

I next offer my thanks and my gratitude to the members of the Madras High Court Service. Theirs is hard work. I am in a better position to say than many of my colleagues, because it was my privilege and duty to study the working of the

High Court, which normally puisne Judges have not. When the High Court staff separated during the separation of the Andhra High Court, and again recently when so many other things had happened, it was given to me to find out how exactly the clerks had to work and how hard their work was. In almost every section they have been overworked. I had to admit to them my failure to relieve them of the burden that still rests on them. The claims for improving the numbers and ensuring better and lighter distribution of work have not yet so far fructified. But I wish to tell them that I hope that my successors will begin where I left and their efforts will be more successful. To every one of them who has done his work I offer my gratitude. Possibly there have been complaints of deterioration in their services judged by the high standards that prevailed even twenty years ago. The nature of litigation has, as I said, changed. You may remember that with Article 226 of the Constitution really in the initial stages, the work became very disorganised, and I know the amount of trouble the Advocate-General had to take in sorting out the papers and in getting the cases disposed of even without papers. But things have come round a bit, and if to-day there are still some defects it is really due to shortage of personnel, and not lack of ability. Though it may appear to be invidious to make a distinction between one section and another, my special praise is due to the shorthand-writers of the High Court. More well equipped than in any other service, more hard worked than even the most hard worked members of the High Court Service, theirs has been a hard lot. Their emoluments have been so low, my wonder was why they stuck to the High Court Service. With their qualification, they would got about four times their pay anywhere else. To some extent they have been able to improve their lot, and the Pay Commission has to some extent increased their salaries. To do full justice to them, they must be paid at least three times of what they are getting. I must once again thank the Registrar, Officers of the Court and other members of the High Court Service for the unstinted help they have extended to me in doing my part of the administrative work. Forgive me for having detained you so long. Once again let me thank all of you. I trust the members of the Bar will forgive my failure to take leave of them individually, and will allow me to say good-bye to them collectively from the slightly advantageous position that I still enjoy. I lay down my office with the pleasant satisfaction that the traditions of the High Court and the Bar are safe in your hands and that the rich heritage will be conserved by you. I offer you my best wishes. May the Bar flourish for ever! And now permit me to say good-bye to one and all of you. Thank you.

RETIREMENT OF CHIEF JUSTICE RAJAMANNAR.

Justice in the abstract is an ideal value of the highest rank. Indeed it is truth in action. Albeit it baffles definition and refuses to be captured by a formula of words. With the voyagers in Browning's Paracelsus, one may legitimately feel that the real heaven is always further beyond. Justice in practice is a matter beset with uncertainty. It fluctuates with the mores of time and country. Yet judicial decision is never at large, and becomes generally a choice between limited alternatives within the framework of traditional approach to legal problems. The impact of independence on the administration of justice has been to produce new perspectives and induce a new outlook. The adoption of the ideals of a welfare State and a socialistic pattern of society has brought in its wake a spate of social legislation giving rise to new types of litigation wherein Courts are called upon to deal increasingly with disputes not so much between private citizens as between the citizens and the State, and in many cases between the States and the Centre, and wherein it is not so much precedents that count as the approach and outlook for finding a just solution to problems. The enlarged scope afforded to writs has served to free imprisoned justice from the trammels of mere technicalities and the cob-webs of law. The post independence period has thus become one of opportunity for the emergence of a new jurisprudence, and for the manifestation of responsibility in the implementation of the new objectives. It was indeed extremely fortunate for the State of Madras to have had at the head of its judiciary during this period a personality like Chief Justice Rajamannar.

A student of philosophy and literature with a brilliant academic background and taste in fine arts like music, dance, drama and painting, imbued with a sense of humour and deep insight into human nature and psychology, endowed with robust commonsense and the temperament of an optimist, trained in the tasks and traditions of the Bar under his distinguished father, and with experience gained through the handling of a variegated volume of work in the Courts, Mr. Rajamannar had all the qualities and equipment needed for making a great and good Judge. He became Advocate-General in 1944, puisne Judge in 1945 and Chief Justice in January, 1948. That he was the first Indian to become the permanent Chief Justice of the Madras High Court gave it an added flavour and was eminently in the fitness of things.

Judged by any test, be it the quality of his judgments or their satisfying character or the nature of the problems tackled or the grasp of facts and principles revealed, Chief Justice Rajamannar is bound to be reckoned as a memorable Judge. He had fully realised the need for progressive interpretation of statutes and particularly of the Constitution in tune with the changing spirit and conditions of the times. It was no accident that in inaugurating the Seminar on Freedom under Law he recalled his own observations made earlier in connection with Article 19: "Even ideas of what is just differs from age to age. What may seem to be just to one man in one age may appear to another in another age as the very quintessence of injustice. In deciding on the reasonableness of the restrictions, it is not possible to think only in the abstract. Several circumstances must be taken into consideration, in particular the purpose of the Act, the condition prevailing in the country at the time, the duration of the restriction, its extent and nature. What may undoubtedly be a reasonable restriction in a state of war or revolution may be utterly unreasonable in normal times. What may be a reasonable restriction if it is for a short duration may be unreasonable for a longer period. The test of reasonableness only makes the task of the Courts in India more onerous". (*Vide,* (1958) 2 M.L.J. (Jour.)

1, 7). This awarness and approach consistently runs through all his judgments, from *Champakam Dorairajan's case,* (1950) 2 M.L.J. 404 onwards.

His judgments outside constitutional matters and statutes are equally luminous. To give a few random instances, in *Prabakara Thampan's case,* (1956) 1 M.L.J. 285, there is a lucid exposition of the nature and incidents of a *stanom* and the status of a *stanee;* in *Thangavelu Asari* v. *Lakshmi Ammal,* (1957) 2 M.L.J. 11, the scope of the forfeiture entailed on remarriage by a widow under section 2 of Act XV of 1856 is vividly explained; and in *Vasanta Pai, In re,* (1960) 1 M.L.J. 21, the rights of an advocate in the discharge of his duties are pointedly brought out.

Another great contribution made by the Chief Justice was the maintenance of a pleasant atmosphere in his Court inviting and encouraging enlightened and luminous discussions and chasing away acrimonious arguments perpetuating mere differences. There was fair deal for all. The Chief Justice's masterly dealing with the facts combined with his mental alertness and erudition led to satisfying solutions.

Literature and fine arts have always engaged the attention of the Chief Justice even among his other duties He has contributed a number of articles and written a number of plays in Telugu. The conferment of a Doctorate in Letters by the Andhra University was a fitting tribute to his versatile talents. His tastes have transcended territory. He is the Chairman of the Sangeet Natak Academy. He also acted as Governor of Madras from October, 1957, for about four months.

Though officially sixty years of age, Mr. Rajamannar is full of energy, and youthful in spirit. Though there is no likelihood of his suffering from *ennui* at any time because of his hobbies and interests outside law, his life has been so rich and his experience so varied that it will be a pity if his services are not availed of by Government in the cause of the country whether in legal and allied fields or in other fields. A truly cultured person and fine gentleman, it may be confidently said of him that no other Chief Justice has on his retirement from service carried with him such a volume of good will and respect as he has done.

FAREWELL FUNCTION AT THE HIGH COURT.

The Fourth Court-Hall and the adjoining corridors of the Madras High Court were filled to capacity by members of the Bar, both of Madras and Andhra Pradesh, Law Officers, and past Judges of the High Court when the Advocate-General, Sri V. K. Thiruvenkatachari, Sri T. M. Krishnaswami Iyer, President of the Madras Advocates Association and Sri S. Chellaswamy, President of the Bar Association, Madras, bade farewell to the retiring Chief Justice on behalf of the Bar. The occasion was unique and the function was impressive with all the Judges of the High Court sitting with the retiring Chief Justice at the function. It was a rare and moving sight to see the Hon'ble Mr. Venkataramana Rao, retired Judge of the Madras High Court and later Chief Justice of the Mysore High Court sitting on the dais listening to the tributes paid to his son who in turn openly acknowledged with reverence his deep debt of gratitute to his parents who moulded his life and career.

THE ADVOCATE-GENERAL'S ADDRESS.

MY LORD CHIEF JUSTICE:

We are met here to-day to say farewell to your Lordship at the end of nearly sixteen years as a Judge, and more than thirteen years as Chief Justice of this Court.

On previous occasions, tributes have been paid to your academic attainments and your career at the Bar, during the last year of which you were the Advocate-General. Your appointment as Chief Justice was welcomed by the Bar and in the Legal Journals. It would be more appropriate for me on this occasion to speak of you as Chief Justice.

In their replies to Farewell Addresses, two predecessors of yours expressed their views about Courts and Justice in Madras. Sir Lionel Leach referred to the changed order and expressed hopes for our future; under your regime these hopes have been fulfilled. Sir William Gentle said it would be a solatium to him if it was felt that he had made a positive contribution to the administration of Justice,—a thought that you will appreciate. But, more to my purpose he referred to the universal approval of your appointment and expressed his sincere wishes for a long, happy and successful tenure for you. This was a felicitous choice of three words.

As to length, time is relentless, but we can assure you that your tenure has not appeared at all long to us. Happy it has been to the Bar, as much as it was to you.

You brought to your work a deep knowledge of law which you wore lightly. Yourself a writer in more than one language, a student of philosophy and the Fine Arts, your approach to any problem or any question was on a broader canvass and with a deeper perception. The advent of the Constitution changed the attitude of law to many aspects of the life of citizens and the controversies in the Courts have raised new vistas. Questions have arisen of reconciling the rights and duties of the State *vis-a-vis* the citizens and the rights of the citizens in the conflict of interests. The period was one of opportunity as well as responsibility. In this context you have given us of your best. In my opinion, your special contribution was what I may call the climate of your Courts. The most controversial or complicated cases were discussed in a pleasant atmosphere. If counsel were unable to put an argument across, you would supply the apt phrase. Arguments took the form of enlightened discussion rather than perpetuation of disagreement. One minor disadvantage for counsel was that he could not get away with a harangue without coming to the point. By a rare combination of gifts, you imbued the halls of solemnity with the unbought grace of life. The reports contain judgments of yours on the most varied topics, bearing witness to your masterly dealing with facts and erudition in law, and more than these, your way of throwing new light on problems bordering on intuition. You could not cease to be an artist in your judgments.

As an administrator, the problems you have had to deal with have been many indeed. I would mention only your untiring efforts to keep the Courts abreast of their work in the course of which you have persistently overworked yourself.

And so, in laying down this office, you may feel gratified that your tenure has been successful. We could say much more but the sum of all that one can say is only to reassure you of what we have always given proof of, and you know only too well, that is the warmth of the regard of the Bar and the depth of our

respect for you. The Bar will always remember your tenure as Chief Justice with pleasant recollections and respectful appreciation. Saying good-bye to you, we offer you our best wishes.

MR. T. M. KRISHNASWAMI AYYAR'S ADDRESS.

Mr. T. M. Krishnaswami Ayyar, President of the Advocates' Association, referred to Mr. Rajamannar's distinguished academic career and said that legal learning, firm grip of first principles, great erudition and untiring habits of critical study and industry brought him an early and easy recognition of both the Bar and the Bench. He had always considered the Bar to be a living institution for study and distinction and had also encouraged the qualities of forthright service and respectful independence of all members of the Bar. It was a great advantage to him that he had his father (Mr. Venkataramana Rao Naidu) with him as an exemplar of professional uprightness and right conduct. He hoped that he would continue to inspire the future members of the Bar to the ways of professional rectitude so that it might ever keep its high reputation. "Your capacity as a Judge of the first rank, your patient hearing of the cases and your unfailing courtesy and kindliness, your uncanny instinct to sense the truth and declare the justice in the cases before you, have become proverbial. May your great example be a guidance and inspiration for all future here and all over the Union," he said.

Offering his good wishes, he said, the work of the retiring Chief Justice would easily rank as the brightest jewel in the reputed diadem of the Madras High Court.

MR. S. CHELLASWAMI'S ADDRESS.

Mr. S. Chellaswamy, President of the Madras Bar Association, said that Mr. Rajamannar, as the first Indian Chief Justice, had a unique role to play after Independence in that he was entrusted with the supreme task of maintaining the high tradition set up by his illustrious predecessors. It must be said to his credit that during his tenure of office the stature and importance of the Madras High Court had been raised in a manner which brought admiration from all parts of the country. Referring to the various qualities of Mr. Rajamannar he described him as an "illustrious Chief Justice."

THE CHIEF JUSTICE'S REPLY.

MY DEAR FRIENDS,

This day and this occasion I will never forget in my life. In spite of the fact that partly by nature and partly by cultivation I generally maintain an attitude of non-attachment I must confess I have been deeply moved and overwhelmed by the unparalleled manifestation of affection and regard on the part of the several members of the Bar. You gentlemen have known me for over 35 years and you Mr. T. M. Krishnaswami Ayyar stand as *loco parentis* to me. You were a contemporary of my father. May I remind you that you were enrolled in the same week as my father. Now I do not know whether I can treat all that you have said as arguments submitted for my approval or disapproval. I am afraid that I do not have that judicial authority to say "The Advocate-General, Mr. T. M. Krishnaswami Ayyar and Mr. Chellaswami argued with great ability. But I am afraid I cannot accept their contentions." I wish to thank you from the bottom of my heart for all the good words you have spoken of me. It is difficult for me to say how far I deserve them. On an occasion like this I am sure you will forgive me if I at the outset express the great debt which I owe and which I hope never to repay to my parents for moulding

my life and career. Mr. T. M. Krishnaswami Aiyar has referred to this aspect. I have tried to imbibe from my father a high sense of duty, thoroughness in work, whether judicial or otherwise, and an intellectual thirst; and from my mother charity, compassion and a deep sense of humour.

My appointment to this exalted office of Chief Justice was both sudden and unexpected. It was sudden because my predecessor, Sir Frederick Gentle, had still several years of service. I was unable to persuade him to change his mind when he was constantly discussing with me his proposed retirement. It was unexpected because I was in point of seniority the sixth among the Puisne Judges at the time. Horwill, Happell, Bell, Kunhi Raman and Clerk, JJ. were all senior to me, and though Kunhiraman, J., had only a few months more to retire, the others had longer service. It was most gracious on the part of the learned Judges who were senior to me to have accepted the choice. I must particularly mention Horwill, J., who continued till the last day of his tenure and who kept up most cordial relations with me and even now regularly corresponds with me and my father. Believe me when I say it was a great ordeal for me. I happened to be the first permanent Indian Chief Justice in a free India. I was fortunate to occupy a place which far more eminent Judges like Kumaraswami Sastriar, Ramesam and Venkatasubba Rao were denied. I was young and had been a Puisne Judge for less than three years. If I was able to discharge my duties, and for an exceptionally long period, it was due entirely to the unstinting help and guidance which I received from colleagues, most of whom were senior to me in age and experience. It has also been my privilege during this long period to administer the oath of the high office of a Judge of this Court to over thirty Judges, members of the Bar and members of the Judicial Service. It is a matter for pride that four of such learned Judges have been appointed Judges of the Supreme Court, and two of them are still on that Court.

In recent years there has been constant comment on the deterioration in standards both among lawyers and among Judges. I would like on this occasion to lodge my protest against such aspersion. It is true that there is not a Bashyam Ayyangar or Subramania Ayyar among Judges to-day. But may I ask how many Bashyam Ayyangars and Subramania Iyers adorned the Bench of the Madras High Court, even in the good old days? I have been at the Bar and on the Bench for nearly four decades. Even in the so-called good old days there were brilliant Judges and also mediocre Judges. Irrelevant considerations were responsible for appointment of Judges of very average calibre even in those old days. Some of you must have heard of one of the learned Judges of this High Court asking a leader of our Bar what share did a son-in-law get, and the classical answer was "A son-in-law gets whatever he can lay his hands upon." Since the establishment of the Supreme Court in 1950—hardly a decade—seven members of the Madras Bar including the four whom I have mentioned were appointed Judges of that Court and one of them filled the highest in the judicial hierarchy, that is, the office of the Chief Justice of India. I realise that many of the giants like Srinivasa Ayyangar, Alladi Krishnaswami Ayyar and Venkatarama Sastri have passed away and that there has been a sudden gap in the Bar. But there are still happily with us leaders like Sri T. M. Krishnaswami Ayyar, R. Gopalaswami Ayyangar, Rajah Ayyar, Gopalaratnam, V. Thiagarajan and others. But there is a hiatus between leaders of that age group and promising young lawyers in their thirties. The reason is not far to seek. I have mentioned that about 30 new Judges were appointed during the thirteen years of my tenure as Chief Justice. I venture to submit that almost every leading member of the Bar at the time has found a place on the Bench. Your learned Advocate-General like the Ceaser many times refused my offer of the judicial crown, and probably rightly according to his inclina-

tions. But there are several others among the younger lawyers who have earned a name both here and in the Supreme Court. I shall not mention names. I have the highest opinion of the talents of the Madras Bar which I now proclaim.

I want to concede one thing, namely, that the depth of legal learning to day among the younger lawyers is far less than it was in the previous generations. How many young lawyers are there to-day with the legal learning of young Alladi. Here again the fault is not entirely that of the members of the Bar. The old topics of litigation which demanded such learning are fast disappearing. With new legislation almost daily, many of the acute problems, for instance of Hindu Law, have become historical. The widow has ceased to be the treasure chest of the lawyers. No alienation of hers can be challenged; no adoption by her. Then again, there is the constantly increasing volume of case-law. Every other day, the Supreme Court of India renders a decision which according to the Constitution lays down the law of the land. It will be idle on the part of a young lawyer to spend his time with historical development of a principle when it is found enunciated authoritatively in one of the latest decisions of the Supreme Court. Which learned Judge would listen patiently to an argument from a junior advocate on a question covered by a recent decision of the Supreme Court if he were to begin from Justinian and Coke and the reports of the Sardar Divani Adalat? Then there is the body of special laws in the application of which precedent does not materially help.

This leads me on to the task which lies before Judge and Advocate to-day, a task whiich will increase in its importance in the coming years. Having regard to the socialistic pattern of society which has been adopted by the leaders of our country and new legislation consequent on the implementation of that ideal, Courts will be dealing more and more with disputes not so much between private parties as between the citizens and the State and in some cases, between the States and the Union. To decide a dispute between private parties is comparatively easier than to decide a dispute between a citizen and the State.

Here I shall very briefly refer to an aspect of judicial approach to which reference was made last night by Mr. Mohan Kumaramangalam at a Dinner in my honour, and that is what I may describe as "the principle of progressive interpretation of statutes" and particularly the Constitution. I would go so far as to say that the Constitution itself demands such progressive interpretation from the Court, an interpretation which would accord with the changing spirit and prevailing conditions of the time. Clause after clause of Article 19 contains the expressions "reasonable restrictions" and "in the interests of the public". Now it is obvious that what was reasonable fifty years ago may not only be not reasonable to-day, but it may be grossly unreasonable. Likewise conceptions as to public interest may undergo radical changes. In the *Minakshi Mills Case*[1] I said:

> "The doctrine of *laissez faire* which held sway in the world since the time of Adam Smith has practically given place to a doctrine which emphasises the duty of the State to interfere in the affairs of individuals in the interests of the social well-being of the entire community."

I cited the following passage from Julian Huxley's Essay on "The Economic Man and the Social Man":

> "Many of our old ideas must be retranslated, so to speak, into a new language. Democratic idea of freedom, for instance, must lose its 19th century meaning of individual liberty in the economic sphere, and become adjusted to new conceptions of social duties and responsibilities."

1. (1951) 2 M.L.J. 382, (389).

It may interest you to learn that this passage was specially noticed in a learned article by a Professor of Law in one of the leading Journals in America with appreciation and expressing a doubt whether the American Judges will have the boldness to quote this passage of Julian Huxley in their judgments.

Though I ceased to be a practising lawyer, from July, 1945, I never forgot I was a member of the Bar and I believe I have treated the advocates who happened to appear before me, whether they be senior or junior, as fellow-members of the Bar and friends. I do not think that I was ever deliberately rude or discourteous to any of them. But I cannot say that I have the gift of patience in such an abundant measure as my brother Rajagopalan had evidencly as I gather from the speeches felicitating him. The reason for my occasional impatience was two-fold. One was the spirit of the advocate in me which would not be eradicated. Once an advocate, always an advocate If a counsel was advancing a view which was opposed to my view, I momentarily would forget that I was a Judge and begin to argue sometimes rather forcibly with counsel as if I was the opposing counsel. The second reason for my impatience was the disappointment in finding an argument being advanced which I thought should not have been advanced. If I have unwittingly offended any member of the Bar, senior or junior, I crave forgiveness.

One of the recurring topics for legislators and members of the public is the arrears in Courts. The impression one gathers is that there were never arrears in the old days in this country and arrears never exist in other countries in the world. Arrears like vice and poverty have always existed in this country and will exist in larger or smaller measure. "Laws Delays" is not an expression coined for India. It goes back to Shakespeare. At the same time I accept the necessity of every effort being made both by the Bench and the Bar to keep down the arrears. When I assumed charge as Chief Justice I was faced with an appalling state of arrears. With the magnificent help and co-operation which I obtained from my learned colleagues and learned members of the Bar to-day the Madras High Court stands practically first among the High Courts in pendency. Except in first appeals and tax cases we have practically finished cases of other description like O. S. Appeals, L. P. Appeals, Writ Appeals, Second Appeals and Civil Revision Petitions of the years before 1959. Of course there are no arrears worth speaking on the criminal side.

My learned brother Rajagopalan, J., only the other day paid a tribute to the efficiency and integrity of the subordinate judiciary. I entirely agree with all that fell from him. I have in other places expressed my gratitude to him for giving me all assistance in the toning up of the subordinate judiciary and in all matters of administration.

Now I shall proceed to thanksgiving. First I thank the God who brought me to the exalted office and in whose name I took the oath. Then I offer my sincere thanks to all the learned Judges of this Court who have worked with me during my long period as Chief Justice and before, but for whose willing help I could not have accomplished what I believe I have accomplished in the disposal of cases and in the administrative matters and in general, in keeping up the prestige of this Court. I am happy in the thought that to-day when I am laying down my office the level of the Bench of this Court is as high as that of any other Court in India. I am also happy that Ramachandra Iyer, J., will be succeeding me in this highest office. I am sure his appointment has been received with universal approbation. There are several experienced Judges who will ably assist him.

I must next offer my thanks to all the members of the High Court, gazetted officers as well as the innumerable employees in different departments, Managers,

Superintendents and clerks. The arduous labours of the members of the staff are not generally widely known to the public, why, not even to all the Judges. I often used to marvel at the thoroughness and accuracy of the notes prepared by them. I could easily imagine how many hours should have been taken in the preparation of each note. Every clerk and every superior officer is being overworked and it is a great pity that though the Pay Commission has to some extent increased their salaries, full justice has not been done to them. I pay my tribute to all the large body of clerks and other employees who are a part of the Madras High Court Service. The Bench Clerks and the Shorthand-writers whose efficiency is probably the highest in the land are always with us, Judges. I offer my most sincere thanks to all Bench Clerks and Shorthand-writers, not only those who happened to be associated with me in my work, but also to the others who have equally helped the work of other Courts. In this connection I cannot refrain from mentioning that I was fortunate in having a succession of very able and conscientious Registrars, Mr. Raman Nair, who is now a Judge of the Kerala High Court, Mr. Ganpati, Mr. Srinivasa Ayyar, Mr. Jayarama Ayyar and Mr. Gajendram who still continues to be the Registrar.

Members of the Bar, I wish every one of you all the best in the world in such measure as it pleased God to give you. I shall now conclude. If in your opinion I have to the best of my capacity succeeded in maintaining the high traditions of this Court, if I have fulfilled the solemn oath of office which I subscribed that I will perform the duties of my office without fear or favour, affection or ill will, if I have gained the affection and esteem of you, the Members of the Bar, then verily I have not lived in vain. May God be with you.

MR. JUSTICE RAMACHANDRA IYER SWORN IN AS ACTING CHIEF JUSTICE.

The Hon'ble Mr. Justice Ramachandra Iyer, the Senior Puisne Judge of the Madras High Court was sworn in by the Retiring Chief Justice as the Acting Chief Justice of the Madras High Court in pursuance of the warrant of appointment by the President. The Hon. Mr. Justice Ramachandra Iyer, is not new to Madras and is known as an able senior practitioner on the Appellate Side before his appointment as a Judge of the High Court about four years ago. He represents the elder counsel of the older generation and has had a training in legal learning that was at once deep and exacting. It is to be hoped that he will be made the permanent Chief Justice in due course. We are sure under his stewardship the Madras High Court will maintain its glorious traditions and reputation for its efficiency in the administrative and judicial spheres.

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NOTES OF RECENT CASES.

Ramachandra Iyer, J. Veerappa Naidu *v.* Gopalan.
27th October, 1960. C.R.P. No. 905 of 1960.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *sections* 2 (1) *and* 7 (3) (*c*)—" *Building* "—*Meaning of.*

The definition of the word ' building in section 2 (1) of the Madras Buildings (Lease and Rent Control) Act, 1949, should be read subject to the qualifications expressed therein, *viz.*, ' unless there is anything in the subject or context '. For purpose of section 7 (3) (*c*) of the Act a part of a building in occupation of a landlord will not be a building as defined by the Act, though the part in the occupation of the tenant will be one. A part of a building will be deemed to be a ' building ' for the puposes of the Act only if it is let or intended to be let. As a portion in the occupation of the landlord cannot be said either to be let or intended to be let such portion will not constitute a building under the Act and could only be termed as part of a building.

Hence where a portion of a building has been let out to a tenant and the other portion remains with the landlord the case would come within section 7 (3) (*c*) of the Act. There may also be cases where a landlord in occupation of a part of a building may *bona fide* require the rest of it even though he may be in occupation of a different building as a tenant. It is not necessary in such cases that the additional accommodation sought for should be in respect of the same business carried on by the landlord in the other part of the building.

G. Ramanujam and *V. Ramaswami*, for Petitioner.

T. M. Krishnaswami Ayyar and *A. Balasubrahmanyam*, for Respondent.

R.M. *Petition dismissed.*

Ramachandra Iyer, J. Dorairaj *v.* Regional Inspector of M.C. & L.B.
3rd November, 1960. W.P. No. 569 of 1959.

Madras Village Panchayats Act (X of 1950), *sections* 42, 50 *and* 51—*Powers of Inspector and Panchayat—Inspector—If can direct a Panchayat to open a market.*

Section 51 of the Madras Village Panchayats Act (X of 1950) makes it clear that it is entirely optional for the Panchayat Board of any village to open and maintain a public market. The matters referred to under section 50 which the Inspector is empowered under sections 42 and 50 to direct the Panchayats to do, does not include the opening of a market. Hence an Inspector will have no authority under section 42 of the Act to direct a Panchayat to construct a market which it had decided not to construct.

M/s Row and *Reddy*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *M. K. Nambiyar* and *K. K. Venugopal*, for Respondent.

R.M. *Rule absolute.*

Ramachandra Iyer, J. Weavers Mills Ltd. *v.* Malkisammal.
3rd November, 1960. C.R.P. No. 1510 of 1960.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 40—*Scope of—Decree in a claim suit under Order* 21, *rule* 63, *Civil Procedure Code—Suit to set aside—Valuation for purposes of Court-fees.*

A claim suit under Order 21, rule 63 of the Civil Procedure Code is a continuation of the execution proceedings and in such a suit the valuation of the property

will be the value of the decree in execution of which the property was sold. A suit to set aside a decree in a claim suit on the basis of fraud or collusion will have to be valued on the amount of the decree in execution of which the property was sold and which was sought to be set aside in the earlier claim suit.

R. Gopalaswamy Ayyangar, for Petitioner.

R. Ramasubbu Ayyar and the Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. — *Orders accordingly.*

Ramachandra Iyer, J.
3rd November, 1960.

Bakthavatsala Reddiar *v.* Nekkundram Panchayat.
W.P. No. 520 of 1958.

Madras Village Panchayats Act (X of 1950)—Panchayats—Right to levy license fee on brick-kilns within their limits.

The essential object of levying a license fee by a local authority is to provide supervision and control over the trade sought to be licensed by it. A Panchayat Board under the Madras Village Panchayats Act does not render any service for brick-kilns and no conditions are attached to the license which require supervision or control over them. Hence a Panchayat Board will have no jurisdiction to impose a license fee on brick-kilns merely because they want to augment their revenues for purposes of maintaining roads and providing a sanitary arrangements which are not peculiar to brick-kilns alone.

K. C. Jacob, S. K. L. Ratan and *J. Satyanarayana*, for Petitioner.

G. Ramanujam, for Respondent.

R.M. — *Rule absolute.*

Venkatadri, J.
4th November, 1960.

Kolandaivelu *v.* Koolayana.
C.R.P. No. 1305 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949) *and Act (XVIII of* 1960), *sections* 7 *and* 35*—Landlord—Meaning of—Own occupation—Scope of—Requisition of a member of joint Hindu family—If owner can apply for eviction—Effect of section* 35 *of new Act on pending proceedings.*

By virtue of section 35 of the Madras Buildings (Lease and Rent Control) Act, 1960, all pending proceedings taken under the earlier Act have got to be decided under the relevant provisions of the new Act.

The expression ' for his own occupation ' in section 7 (3) of the Act (now section 10 of the new Act) cannot be restricted only to the occupation of the landlord himself but should be interpreted to include the individual's family and dependents. It is proper and desirable for the Court to take into consideration the context of social order, customs, habits and ideas of living of the community to which the individual belongs and then come to a conclusion about the *bona fide* requirement of the landlord.

A landlord is entitled to apply under the Act for eviction of the tenant on the ground that he requires the building for establishing a separate residence for his son. The fact that the son has got a right in other joint family property or that he is living in the joint family house cannot be a bar to the maintainability of the application. Mere constructive or notional possession of other properties cannot constitute occupation of a building of his own under the Act.

(The provisions under the new Act, section 10, making express provision for the right of the sons pointed out. A father can file an application on the ground of his son's requirement).

M. Natesan, for Petitioner.

N. R. Raghavachari, for Respondent.

R.M. — *Petition dismissed.*

[SUPREME COURT.]

S. J. Imam, J. L. Kapur, K. C. Das Gupta, Ragubar Dayal and N. Rajagopala Ayyangar, JJ.
18th November, 1960.

Pratap Singh *v.* State of Madhya Pradesh.
Cr.A. No. 106 of 1956.

Criminal Procedure Code (V of 1898), *section,* 421—*Constitutional validity—Penal Code (XLV of* 1860), *section* 307—*Indian Arms Act, section* 19 *(f).*

"Different considerations arise in the case of a convicted person who presents his petition of appeal in person or through a pleader in which case he or his pleader must be heard before the appeal is summarily dismissed." It was held that the basis for making the classification "has a reasonable connection with the object of the legislation providing for the appeal.".

Section 421 of the Criminal Procedure Code was held to be *intra vires* the Constitution.

A. D. Mathur, for Appellant.

B. K. B. Naidu, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.
21st November, 1960.

Damodar Valley Corporation *v.* The State of Bihar.
C.A. No. 285 of 1959.

Sales Tax—Sale with the condition of re-purchase and not one of hire—Test—Liability to sales tax.

The Court held that the controversy between the parties must be resolved with reference to the terms of the contract between them. After examining them the Court held that the transaction in the present case was one of sale with the condition of re-purchase and not one of hire. The Court further held that the transaction relating to the equipments were "sales" and liable to sales tax.

M. C. Setalvad, Attorney-General of India, for Appellant.

A. V. V. Shastri, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
21st November, 1960.

Hingir Rampur Coal Co. *v.* State of Orissa.
Writ Petition No. 87 of 1959.

Orissa Mining Areas Development Fund Act, 1952 *and the Rules made thereunder—Entries* 23 *and* 66 *of List II of the Seventh Schedule of the Constitution—Whether cess, a tax or duty or only a fee.*

The Orissa Mining Areas Development Fund Act had been passed with a view to developing the mining areas in a State which was under-developed, though "mineral wealth of great potential value" existed therein. The achievement of this object necessitated that provision should be made for improving the communications by constructing good roads and by providing means of transport, supply of water and electricity. The cess levied by the impugned Act was neither a tax nor a duty of excise, but a fee.

The fee levied by the impugned Act was relatable to Entries 23 and 66 in List II of the Seventh Schedule of the Constitution. The State Legislature, therefore, was competent to pass the impugned legislation. The Orissa Mining Areas Development Fund Act was not *ultra vires* the Constitution.

M. P. Amin, for Petitioner.

A. V. V. Shastri, for Respondents.

G.R. *Petition dismissed.*

M.—N R C

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.
22nd November, 1960.

Delhi Cloth and General Mills Ltd. *v.* Rameshwar Dayal.
C.A. No. 353 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 33-*A—Re-instatement—If can be ordered as interim relief.*

The management would have to pay full wages to the employee if they did not permit him to work in the interim period. Where the tribunal, while considering a complaint under section 33-A of the Industrial Disputes Act had to decide whether or not an employee should be reinstated " it is not open to the tribunal to order reinstatement as an interim relief". That relief would be the main relief to which the employee would be entitled "only if the employer failed in the proceedings initiated by the employee."

(1960) S.C.J. 317 and (1960) S.C.J. 999 considered.

M. C. Setalvad, Attorney-General of India, for Appellant.

G. S. Pathak, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. J. Imam, S. K. Das, J. L. Kapur, A. K. Sarkar and K. Subba Rao, JJ.
23rd November, 1960.

Abdul Hakim Querishi *v.* State of Bihar.
Writ Petitions Nos. 15 of 1959, 21 of 1959 & 14 of 1960.

Bihar Preservation of Animals (Amendment) Act, 1958—*The Madhya Pradesh Agricultural Cattle Preservation Act,* 1959—*Uttar Pradesh Preservation of Cow Slaughter (Amendment) Act,* 1958—*Constitutional validity.*

" We are clearly of the view that the almost unanimous opinion of experts is that after the age of 15, bulls, bullocks and buffaloes are no longer useful for breeding, draught and other purposes and whatever little use they may have then is greatly off-set by the economic disadvantages of feeding and maintaining unserviceable cattle." Regarding the provisions contained in the U. P. Act, providing that the animal would not be slaughtered within 20 days from the date of the issue of the certificate was also held *ultra vires.*

Regarding the Madhya Pradesh Act's provision that it would be for the accused to prove that the animal was not slaughtered, purchased or sold in contravention of the provision of the Act, it was held to be valid because the evidence involved in the case would be " within the special knowledge of the person himself."

H. J. Umrigar and Frank Anthony, for Petitioners.

L. K. Jha, for the State of Bihar.

H. N. Sanyal, Additional Solicitor General of India, for the State of Uttar Pradesh.

M. Adikari, Advocate-General, M.P., for the State of M. P.

G.R. *Petitions allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, and K. N. Wanchoo, JJ.
30th November, 1960.

Jeshtamani Gulabrai Dholakia *v.* Scindia Steam Navigation Co., Ltd.
C.A. No. 395 of 1959.

Industrial Disputes Act (XIV of 1947)—*Air Corporation Act,* 1953, *section* 20.

The Court upheld the decision of the Industrial Tribunal because the appellants having been informed by the Respondents' company had not exercised the option given to them by the Proviso of section 20 (1) of Air Corporation Act to opt for the corporation from August 1, 1953, as their employees.

N. C. Chatterjee, for Appellants.

I. N. Shroff, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
5th *December*, 1960.

Lt. Col Khajoor Singh *v.* The Union of India.
C.A. No. 37 of 1955.

Constitution of India (1950), *Article* 32(2-*A*) (*applicable to Jammu and Kashmir State only*)—*Article* 226 (*a*) *of the Constitution—Scope—Writs against Union of India.*

By Majority : Under Article 226 (*a*) of the Constitution the power is to be exercised " throughout the territories in relation to which the High Court exercises jurisdiction", that is to say, the writ issued by the Court could not run beyond the territories subject to its jurisdiction, and (*b*) the person or authority to whom the High Court was empowered to issue such writs must be " within those territories " which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories. This view was the corect one.

V. S. Sawhny, for Appellant.

C. K. Daphtary, Solicitor General of India, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
5*th December*, 1960.

Rameshwar Dayal *v.* State of Punjab.
C.A. No. 438 of 1960.

Constitution of India (1950), *Article* 233 (2)—*High Court's* (*Punjab*) *Order*, 1947—*Meaning of an Advocate or pleader—Whether they include an Advocate enrolled in the erstwhile Lahore High Court—Article* 133 *of the Constitution.*

Advocates of the High Court were entitled as a matter of right to practise in the post-partition Punjab High Court by virtue of the High Courts (Punjab) Order, 1947.

The Court said the appointees " had the necessary standing to be eligible under Clause (2) of Article 233 ".

A. S. Chari, for Appellant.

S. M. Sikri, Advocate-General, Punjab and *A. V. V. Shastri*, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
6*th December*, 1960.

Gazula Dasaratha Rama Rao *v.* State of Andhra Pradesh.
Writ Petition No. 133 of 1959.

Madras Hereditary Village Offices Act (*III of* 1895), *section* 6 (1) *restricting the choice of village officers to persons "from amongst the families of the last holders is unconstitutional as it contravenes Article* 14 *of the Constitution* ".

Section 6 of the Madras Hereditary Village Offices Act was struck down on the ground that the impugned provisions placed a restriction on the ground of "descent" and therefore held as *ultra vires.*

Further held that the impugned provisions of the Act embodied a principle of discrimination and was in contravention of Article 16 (2) of the Constitution.

A. V. V. Shastri, for the Petitioner.

D. Narasa Raju, Advocate-General, A. P., for Respondents.

G.R. *Petition allowed.*

M—N K C

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. Subba Rao & J. C. Shah, JJ.
9th December, 1960.

Munnathat Thatuni Moopil Nair *v.* State of Kerala.
Writ Petitions Nos. 13-24. 42 & 46-54 of 1958.

Travancore-Cochin Land Tax Act, 1955—Ultra vires *the Constitution being discriminatory and confiscatory in charactor—Sections* 4 *and* 5 *of the Act—Validity.*

The Travancore-Cochin Land Tax Act, 1955, enabling the Government to levy a uniform tax on lands and section 5 thereof laying down that the rate of tax shall be Rs. 2 per acre are unconstitutional, as inequality is writ large in the Act and is inherent in the veiy provisions of the taxing section. It is one of those cases where a lack of classification in the provisions creates inequality. The Act did not provide for (1) the issue of the notice to the assessee, (2) for the submission of a return and (3) for any appeals and there was no attempt to make any classification of the various classes of lands.

M. R. K. Pillai, for Petitioner.

K. V. Suryanarayana Aiyar, Advocate-General, Kerala, for Respondents.

G.R. — *Petitions allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
9th December, 1960.

Kishan Chand Arora *v.* Commissioner of Police, Calcutta.
Writ Petition No. 22 of 1960.

Calcutta Police Act (1866), *section* 39—*Is not* ultra vires—*Constitution of India* (1950), *Article* 19.

The Calcutta Police Act (1866) being a pre-Constitution Act, it must be fairly and reasonably interpreted, and the section should not be struck down, though it had not been worded in a manner which would show that the considerations arising from the provisions of Article 19 of the Constitution of India 1950 were kept in mind. The Act provides for guidance of the discretion of the Commissioner of Police and in this view did not violate the fundamental right of the petitioner to carry on business.

B. P. Maheshwari, for Petitioner.

S. M. Bose, Advocate-General, West Bengal, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
9th December, 1960.

Voltas Ltd *v.* Its Workmen and another.
C.A. Nos. 153-154 of 1960.

Industrial Disputes Act (XIV of 1947)—*Profits of the Company—Surplus available or calculating bonus—Contributions to political funds—If to be deducted as trading expense.*

The contributions by a company to the political funds of a party could not be deducted as a trading expense when working the available surplus for calculating the bonus payable to workmen.

R. N. & Co, for Appellant.

J. Sharma, for Respondents.

G.R. *Appeal dismissed.*

Veeraswami, J.
20th October, 1960.

Abdul Majid *v.* Papathi Ammal.
S.A. No. 880 of 1958.

Transfer of Property Act (IV of 1882), section 53—Fraudulent transfer—What is. Madras Indebted Agriculturists (Re-payment of Debts) Act (I of 1955), section 7—Presumption under.

The test to see whether a transfer is a fraudulent one within the meaning of section 53 of the Transfer of Property Act, is to find out whether the debtor has retained any benefit for himself under the impugned transfer. Hence, even in cases where a property is sold to discharge an earlier mortgage, if out of the sale price the debtor receives some consideration to himself, however small it may be, the transfer will be hit by section 53. The fact that the major part of the sale price went in discharge of an earlier mortgage on the very property covered by the sale-deed, does not in any way affect the position.

The statutory presumption against the validity of a sale enacted in section 7 of the Madras Indebted Agriculturists (Re-payment of Debts) Act, 1955, will be attracted in cases where a sale is effected under which the vendor derives some benefit for himself, even though the major portion of consideration for the sale goes in discharge of an earlier mortgage on the very property sold.

R. Gopalaswami Ayyangar, for Appellant.

N. R. Sesha Ayyar, for Respondent.

R.M. ——— *Appeal allowed. No leave.*

Rajamannar, C.J. and Veeraswami, J.
28th October, 1960.

Working Journalists of the 'Hindu' *v.*
Management of the 'Hindu'.
W.A. No. 144 of 1959.

Industrial Disputes Act (XIV of 1947), sections 2(k), 10 (1) (c) and 15—Scheme and scope of—Industrial dispute referred for adjudication—If could cease to be an industrial dispute subsequently—Jurisdiction of Labour Court.

An industrial dispute within the contemplation of the Industrial Disputes Act, 1947, is a collective dispute that existed or was apprehended prior to the date of its reference to the Labour Court for adjudication. Whether such a dispute referred to for adjudication continued, even after its reference, to retain its character as such has no bearing upon and does not affect the jurisdiction of the Labour Court to proceed and make an award on the industrial dispute referred to it. The jurisdiction of the Labour Court springs from the reference made to it and is confined to the dispute as referred to it, which means the dispute which existed or was apprehended prior to the date of its reference.

(Scheme and provisions of the Act analysed—Object of the legislation indicated.)

S. Mohan Kumaramangalam and *K. V. Sankaran,* for Appellant.

R. Ramamurthi Ayyar, for Respondent.

R.M. ——— *Appeal allowed.*

Jagadisan and
Kailsam, JJ.
1st November, 1960.

Narayana Ayyangar *v.*
Commissioner of H.R. and C.E., Madras.
Appeal No. 199 of 1957.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), section 6(13)—'Religious charity'—Feeding of Brahmins during festival season—When a religious charity.

To constitute a 'religious charity' within section 6 (13) of the Madras Hindu Religious and Charitable Endowments Act, 1951, there should be a public charity which should be associated with a Hindu festival or observance of a religious character. The charity, however, need not be connected with a math or temple. In order to hold that a feeding of brahmins on festive occasion is associated with the festival itself, there should be a unity of purpose or a common object or common endeavour between the festival itself and the charity. The mere fact that a feeding charity is held on an important festival occasion is not by itself enough to establish

any link between the occasion and the charity itself. Where in a place of sacred shrine feeding of people on an important festival of the temple is done, independently of the temple festival, the feeding charity cannot be held to be a religious charity within the meaning of section 6 (13) of the Act.

S. Rangaswami Ayyangar and *T. Krishnaswami Ayyangar*, for Appellant.

The Government Pleader (*A. Alagiriswami*) and *R. G. Rajam*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan and Srinivasan, JJ. M. K. M. & G. Sanjeevi Chettiar *v.* State of Madras.
1st November, 1960. T. R. C. No. 72 of 1957.

Madras General Sales Tax Act (IX of 1939)—*Departmental Officers inspecting premises and finding anamath account books—Officers however disabled from seizing the books—Reliance on the note prepared by the officer—Scope and extent of.*

Obiter.—Where a departmental officer under the Madras General Sales Tax Act inspects a place of business and inspects some account books in the course of a few minutes, but the books were however removed before he could seize them, great reliance cannot be placed on his notes that several lakhs of rupees worth of turnover has escaped assessment. Even if his statement that three to four lakhs of rupees turnover might have escaped assessment the taxing authority will not be justified in taking the figure at the higher lakh. The benefit of the ambiguity in the statement of the officer should necessarily go to the assessee.

U. Somasundaram, P. Kothandaraman and *R. Rajagopalan*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Orders accordingly.*

Rajagopalan and Srinivasan, JJ. Palaniappa *v.* State of Madras.
7th November, 1960. T. C. No. 96 of 1958.

Madras General Sales Tax Act (IX of 1939), *section* 22—*Exemption under—Pre-requisites.*

What section 22 of the Madras General Sales Tax Act, 1939, requires is not only that a sale or purchase should be for consumption within the State of Madras, but that the delivery in Madras should be the direct result of the sale or purchase. Where an assessee purchases the goods in Madras, there could be no element of transport at all to bring it as a case of delivery, direct or otherwise, within the meaning of section 22.

A. Shanmugavel, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopalan and Srinivasan, JJ. State of Madras *v.* Asher Textiles Ltd.
8th November, 1960. T. R. C. No. 151 of 1958.

Madras General Sales Tax Act (IX of 1939), *section* 12(2)—*Revisional powers under—Escaped turnover—What amounts to—Amendment of law—Effect of.*

Where the law relating to levy of sales tax is amended with retrospective effect, it was the amended law that should be deemed to have been administered even on the date of the original order. An order made on the basis of the law as it then stood, though valid then, would become wrong by virtue of the subsequent amendment of the law with retrospective effect.

(1959) S.C.J. 1054, referred.

The Government Pleader (*A. Alagiriswami*), for Petitioner.

T. R. Ramachandran and *S. Jagannadhan*, for Respondent.

R.M. ——— *Petition allowed.*

Veeraswami, J.
8th November, 1960.

Palayamkottai Municipality *v.* Kantayya.
S.A. No. 73 of 1959

Madras District Muncipalities Act (V of 1920), *section* 88 (4)—*Effect of—Transferee of part of a property—If liable to pay the tax on the entire property due to failure of transferor to give notice of the transfer.*

It is clear from the terms of sub-section (4) of section 88 of the Madras District Muncipalities Act, that it only provides for the transferor's continued liability in the event of his failure to notify the Municipality within the time specified in sub-section (1) of the section, of the transfer effected by him. The penalty for non-intimation is that notwithstanding the transfer made by an owner of a portion of his property, his liability to pay the entire tax in respect of the whole property would continue till the change is made in the registry of the Municipality. Sub-section (4) (*a*) no doubt also provides that the liability of the transferee to pay the tax on that part of the property purchased by him is not in any way affected by reason that the transferor's liability to pay the tax on the entire property continues. But that does not mean that a transferee of a part of a property will be liable to pay the tax even in respect of the part not transferred to him.

B. V. Viswanatha Ayyar, for Appellant.

K. Srinivasan and *K. Shanmugam*, for Respondent.

R.M. *Appeal dismissed. No leave.*

Ramachandra Iyer, J.
9th November, 1960.

Venkataswami *v.* Assist. Collector, Salem District.
W.P. No. 986 of 1958.

Madras Hereditary Village Offices Act (III of 1895), *section* 23 *and rule* 20—*Appeal to Board of Revenue—If personal hearing should be given.*

Under the rules framed under the Madras Hereditary Village Offices Act there is no obligation to give a personal hearing in appeals before the Board of Revenue, much less in second appeals. Nor does a mere failure to give a personal hearing by an Appellate Authority, in the absence of a specific provision to the contrary, constitute a violation of any principle of natural justice.

V. Srinivasan and *D. V. Sivagnanam*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Veeraswami, J.
16th November, 1960.

Corporation of Madras *v.* Vijayalakshmi.
S.A. No. 26 of 1959.

Madras City Municipal Act (IV of 1919), *sections* 218 (2) *and* 390-*A and Limitation Act (IX of* 1908), *section* 29 (2)—*Scope.*

A suit for recovery of improvement charges for work done by the Corporation from the owner of the property liable therefor will be a claim under section 218 (2) of the Madras City Municipal Act and the period of limitation therefor will be governed by section 390-A of the said Act. The applicability of section 29 of the Limitation Act to such cases is expressly excluded and there could be no question of saving the limitation by acknowledgment. The claim will be barred if the suit is not instituted before the expiry of three years from the date when a suit might first have been instituted, *i.e.*, when the Corporation incurred the expenses.

T. Chengalvarayan, for Appellant.

T. R. Srinivasa Ayyangar, for Respondent.

R.M. *Appeal dismissed. No leave.*

Srinivasan, J. Chinnaswami *v.* Rajamba Bai.
23rd November, 1960. S.A. No. 70 of 1959.

Hindu Marriage Act (XXV of 1955), *section* 11—*Status of parties—Suit for declaration of—Applicability of the maxim* in pari delicto.

Where the status of parties, whether or not one is the wife of the other, is concerned, the principle of *pari delicto* cannot be relied on to refuse to grant the declaration sought for. Where a marriage is void *ab initio* by virtue of the Statute prohibiting bigamous marriage, the fact that both parties to such a marriage were guilty is not a ground for refusing the relief of declaration that the marriage is void at the instance of either party.

V. Srinivasa Ayyar, K. Raman and *P. V. B. Mani*, for Appellant.

S. Mohan Kumaramangalam and *S. Palaniswami*, for Respondent.

R.M. ——— *Appeal allowed.*

Veeraswami, J. Esther G. John *v.* Samuel Nadar.
28th November, 1960. S.A. No. 179 of 1959.

Succession Act (*XXXIX of* 1925), *sections* 265 *and* 286 *and Madras Civil Courts Act* (1873), *section* 29 (1)—*Effect of—Power of Subordinate Judge to deal with contentious testamentary matters—Scope of.*

It is no doubt true that under the provisions of sections 265 and 286 of the Indian Succession Act, a District Delegate is not competent to deal with a contentious testamentary matter. But by virtue of the provisions of section 29 (1) of the Madras Civil Courts Act and the notification issued by the High Court in pursuance thereof, the Subordinate Judges are empowered to take cognizance of any proceedings, including contentious proceedings, under the Indian Succession Act which cannot be disposed of by a District Delegate.

(1932) 62 M.L.J. 622 : I.L.R. 55 Mad. 701 and (1956) 2 M.L.J. 288, referred.

D. Ramaswami Ayyangar and *T. K. Subba Rao*, for Appellant.

K. S. Ramamurthi and *T. R. Mani*, for Respondent.

R.M. ——— *Appeal dismissed.*
Leave granted.

Rajamannar, C.J. and Venkatadri, J. Chandriah *v.* Valchi Madhaviah.
13th December, 1960. C.C.C.A. No. 50 of 1957.

Partership—Partners—If entitled to interest on their capital—Interest on money overdrawn by a partner—When awarded.

It is now well settled that it is not the practice of Courts to allow interest on moneys overdrawn by a partner from the partnership funds unless of course there is a clear agreement to that effect or there are special circumstances rendering it necessary that interest should be charged. Similarly where interest on capital is payable between the partners it stops running from the date of dissolution unless otherwise agreed. In order to entitle a partner to interest on moneys brought by him into the partnership business there must be (*a*) an express agreement to that effect; or (*b*) contract of the trade partnership, a course of dealing between the partners usually shown from the partnership books or other facts and circumstances from which such an agreement may be implied ; or (*c*) any trade custom to that effect ; or (*d*) a statutory provision which entitles him to such interest (*e.g.*) section 13(*d*) of the Partnership Act which recognises the right of a partner to charge interest on advances made by him as distinguished from the capital.

A. Durairaj, G. Vasudevan and *P. Venkataswami*, for Appellant.

A. Sundaresan, G. Ramakrishna Ayyar and *P. Ramnujam Chetty*, for Respondent.

R.M. ——— *Orders accordingly.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and *J. R. Mudholkar, JJ.*
7th *December*, 1960.

Shri Manna Lal *v.* The Collector of Jhalwar.
C.A. No. 88 of 1957.

Rajasthan Public Demands Recovery Act, 1952, *sections* 3, 4 *and* 6—*Article* 14 *of the Constitution—Scope.*

A point was sought to be made that in each case there were two documents, namely, the application by the appellants and the receipt for the moneys advanced signed by them, whereas a public demand as defined in the Act, required one instrument. It is enough to say in regard to this contention that the Act does not say that the moneys shall be due under a single instrument. It is well-known that in a statute a singular includes the plural. In any case, the two documents constituted the written agreement between the parties and that is enough to satisfy the requirement of the Act, even if read in the way suggested by the appellants.

It is said that the Act makes a distinction between other bankers and the Government as a banker, in respect of the recovery of moneys due. It seems to us that the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Article 14 of the Constitution

S. K. Kapur and *Ganpat Rai,* for Appellants.

N. S. Bindra, Senior Advocate (*D. Gupta,* Advocate, with him), for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and *J. R. Mudholkar, JJ.*
7*th December,* 1960.

Surajpal Singh *v.* The State of Uttar Pradesh.
Cr. A. No. 169 of 1959.

Prevention of Corruption Act (*II of* 1947, *section* 5—*Presumption under—Scope and applicability.*

" It is not open to the appellate Court to affirm the conviction of the appellant on an entirely new case never suggested against the appellant at any earlier stage. It is unfortunate that in this case the Courts below did not choose to rely on the rule of presumption laid down in sub-section (3) with reference to the charge under clause (*c*) of sub-section (1) of section 5 of the Prevention of Corruption Act. But that misfortune cannot now be repaired by evolving out of a vacuum as it were a new case against the appellant based on clause (*a*) or clause (*d*) of sub-section (1) of section 5 in support of which no facts were even alleged or suggested."

(1960) 1 S.C.R. 461 : (1960) S.C.J. 160 : (1960) M.L.J. (Cr) 91, referred to.

Nuruddin Ahmed and *Naunit Lal,* for Appellant.

G. C. Mathur and *C. P. Lal,* Advocates, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
12*th December,* 1960.

Ambica Mills Co., Ltd. *v.* S. B. Bhatt.
C.A. No. 243 of 1959.

Payment of Wages Act (*IV of* 1936)—*Industrial Disputes Act* (*XIV of* 1947)—*Finding as to nature of work done by employee*—Res judicata.

The only point which calls for decision is whether or not the work done by the three respondents takes them within the category of cut-lookers specified under clause (5), and as we have already pointed out, on an earlier occasion the authority has found in favour of two of the three respondents when it held that they were folders doing cut-looking. If the said finding amounts to *res judicata* it is in favour of the two respondents and not in favour of the appellant; that is why the learned Attorney-General did not seriously dispute the correctness of the decision of the High Court on the question of *res judicata.*

M. C. Setalvad, Attorney-General of India, for Appellant.
Vithalbhai Patel, for Respondent.

G.R. —————— *Appeal dismissed.*

[SUPREME COURT]

P. B. Gajendragadkar and *K. N. Wanchoo, JJ.*
12th December, 1960.

The Lord Krishna Textile Mills *v.* Its Workmen.
C.A. No. 427 of 1959.

United Provinces Industrial Disputes Act, 1947 (*XXVIII of* 1947)—*Industrial Disputes Act* (*XIV of* 1947), *section* 33—*Findings of management—Tribunal if can sit in judgment over.*

Having carefully considered the reasons given by the Tribunal in its award under appeal, we have no hesitation in holding that the appellant is fully justified in contending that the Tribunal has assumed jurisdiction not vested in it by law, and consequently its refusal to accord approval to the action taken by the appellant is patently erroneous in law.

As we have already pointed out the Tribunal had no jurisdiction to sit in appeal over the findings of the enquiry as it has purported to do. The result is that the conclusion of the Tribunal in regard to all the workmen is unjustified and without jurisdiction.

M. C. Setalvad, Attorney-General of India, for Appellant.
B. P. Maheshwari, Advocate, for Respondents.

G.R. —————— *Appeal allowed.*

[SUPREME COURT]

S. J. Imam, J, L. Kapur, K. C. Das Gupta, Raghubar Dayal and *N. Rajagopalan Ayyangar, JJ.*
13th December, 1960.

Diamond Sugar Mills Ltd. *v.* The State of Uttar Pradesh.
C.A. No. 35 of 1959.

U. P. Sugarcane Cess Act, 1956—*Vires of—List II of the Government of India Act*, 1935—*Article* 277 *of the Constitution of India—Entry* 52, *List II—State List, Seventh Schedule, Constitution of India.*

By Majority.—Section 3 of the U.P. Sugarcane Cess Act, 1956, empowering the Governor to impose a cess on the entry of sugarcane into the premises of a factory did not fall within Entry 52 of the State List. As there is no other Entry in either State List or Concurrent List in which the impugned law could fall, there is no escape from the conclusion that this law was beyond the legislative competence of the State Legislature. The law as enacted in section 3 of the U. P. Sugarcane Cess Act, 1956, must therefore be struck down as invalid.

H. N. Sanyal, Additional Solicitor General of India, for Appellants.
G. C. Mathur, for Respondents.

G.R. —————— *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and *J. C. Shah, JJ.*
3rd January, 1961.

Tulsidas Kilachand *v.* C. I. T.
C.As. Nos. 134-137 of 1959.

Income-tax Act (*XI of* 1922), *section* 16 (1) (c) *and* (3) (b)—*Scope.*

The Court upheld the decision of the Bombay High Court which replied the undergiven questions referred to it, in the affirmative :—

Whether on a true construction of the deed of declaration of trust, dated 5th March, 1951, the net dividend income of Rs. 30,404 on 120 shares of Kilachand Devchand & Co., Ltd., and 244 shares of Kesar Corporation Ltd., held under trust by the assessee for the benefit of his wife was income liable to be included in the total income of the assessee.

R. J. Kolah, for Appellant.
K. N. Rajagopala Shastri, for Respondent.

G.R. —————— *Appeals dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyngar and J. R. Mudholkar, JJ.
12th January, 1961.

Babulal Parate *v.* State of Maharashtra.
W. P. No. 90 of 1956.

Criminal Procedure Code (*V of* 1898), *section* 144—Intra vires *the Constitution of India* (1950).

Held that maintenance of law and order was the duty of the executive ; the question of the formation of opinion " as to whether there is an emergency or not must necessarily rest with the executive ".

" It cannot be said that by reason of wide amplitude of the power conferred on Magistrates by section 144, Criminal Procedure Code, it places unreasonable restrictions on fundamental rights."

R. S. V. Mani, for Petitioner.

N. S. Bindra, for Respondents.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
12th January, 1961.

G. V. Godse *v.* State of Maharashtra.
W. P. No. 305 of 1960.

Constitution of India (1950), *Article* 32—*Remissions in Jail—Bombay Jail Manual—Sections* 55 *and* 58 *of the Indian Penal Code* (*XLV of* 1860).

" In every case in which the sentence of transportation of life shall have been passed, the State Government may commute the sentence for imprisonment of either description for a term not exceeding fourteen years ". Under section 58, the prisoner shall be treated as undergoing rigorous imprisonment till such time as he is " transported ". " In view of this it was held that Godse could be treated as a prisoner undergoing " rigorous imprisonment."

Without the formal remission of the sentence " the sentence of life imprisonment could not be treated as one of a " definite period ". After 1955, a convict sentenced to life imprisonment is bound in law to serve the life term in prison unless the said sentence is commuted or remitted by the appropriate authority under the relevant provisions of the Indian Penal Code or the Criminal Procedure Code.

Petitioner, in person.

H. N. Sanyal Additional Solicitor-General of India, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. B. Mudholkar, JJ.
12th January 1961.

Rabia Bai *v.* Ogep.
C.A. No. 22 of 1956.

Administration of Evacuee Property Act (*XXXI of* 1950), *section* 40 (1) *and* (4) (a)—*Scope.*

It is significant that though the provisions of section 40 (1) are drastic they have been deliberately made retrospective and that emphatically brings out the aim and

object of the Act; and it would be unreasonable to ignore this aim and object of this Act in construing the expression 'good faith' in section 40 (4) (*a*). We would therefore hold that having regard to the aim and object of the Emergency Legislation with which we are concerned, in the present case the expression has been properly construed by the respondent, when he held that a deliberate intention to defeat the apprehended application of the Evacuee law which was responsible for transfer in question brings the transfer within the mischief of section 40 (4) (*a*).

A. V. Viswanatha Shastri, for Appellant.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, K. Subba Rao and Raghubar Dayal, JJ.
13th January, 1961.

Saibal Kumar Gupta *v.* B. K. Sen.
Cr.A. No. 100 of 1958.

Contempt of Courts Act (XXXII of 1952), *section* 3—*Scope.*

By Majority (with *Subba Rao, J., dissenting*) :—The record does not establish that at any time the appellants have made comments on the case under section 497, Indian Penal Code, pending against B. K. Sen or in respect of any matter pending in connection with that case in the Calcutta High Court. We have looked into the record of the case and have no hesitation in saying that the appellants at no time intended to interfere with the course of justice and their conduct did not tend to interfere with the course of justice. The appellants have been careful in making no comments on any proceedings pending in the Court of law or the issues arising out of them.

In these circumstances we are of the opinion that the offence of contempt of Court by the appellants has not been established.

G. S. Pathak, for Appellants.

L. K. Jha, for Respondent.

G.R. *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
21st October, 1960.

Ellerman and Buckhall Steamship Co., Ltd. *v.* Sha Bhugajee Sonmull.
C.C.C.A. Nos. 52 and 53 of 1957.

Carrier—Carriage by sea—'Clean Bill of Lading'—Meaning of.

A 'Clean Bill of Lading' is one that does not contain any reservation as to the apparent good order or condition of either the goods themselves or their packing. A defect in packing, if noted in a bill of lading, will render it an unclean bill. But the mere fact that the bill of lading mentioned that the goods were packed in used packing material, will not by itself make it an unclean bill as in some cases used materials would be better suited for packing than new or unused ones.

Messrs. King and *Partridge,* for Appellant.

V. Tyagarajan, M. A. Rajagopalan, V. Rajagopalachari and *S. Ramiah,* for Respondents.

R.M. *Orders accordingly.*

Jagadisan and Kailasam, JJ.
2nd November, 1960.

State of Madras *v.*
Parisutha Nadar.
Appeal Nos. 169 and 230 of 1957.

Land Acquisition Act (I of 1894) *and Madras Estates Abolition and Conversion into Ryotwari Act (XXVI of* 1948)—*Notification vesting land in an erstwhile estate in the Government—If could defeat the claim of the owner for compensation.*

On principle when once the Government avails itself of the provisions of the machinery under the Land Acquisition Act for compulsory acquisition, treating the subject-matter of the acquisition as not belonging to itself but to others, the State Government comes under an obligation to pay the compensation as provided under the Act.

It is not open to the Government in the course of the proceedings to put forward its own title to the property sought to be acquired so as to defeat the rights of the persons entitled to the compensation. A notification made under section 3 of the Madras Estates Abolition Act cannot have the effect of defeating the right of the claimant for compensation under the Land Acquisition Act.

The Government Pleader (*A. Alagiriswami*) and *G. Ramanujam*, for Appellant.

T. R. Srinivasan and *T. Ramalingam*, for Respondents.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J.
9*th November*, 1960.

Palappa Nadar *v.*
Collector of Central Excise, Madras.
W.P. No. 590 of 1958.

Central Excise and Salt Act (I of 1944), *section* 35—*Power of remand—If available to the appellate authority.*

Though section 35 of the Central Excise and Salt Act, 1944, does not in express terms confer a power of remand on the appellate authority, still such a power is inherent in and is an ordinary incident of the appellate power. But unless the appellate authority in terms remands the matter while setting aside an order under appeal, the order passed in appeal will be final under section 35 (2) and the Collector will have no jurisdiction to initiate fresh proceedings.

N. Arunachalam, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Jagadisan and Kailasam, JJ.
9*th November*, 1960.

Ganapathi *v.* Ayyakannu.
C.R.P. No. 943 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 2 (*a*)—*Cultivating tenant—If includes a sub-lessee or under lessee.*

Under the general law of landlord and tenant an under-lessee being only a holder of a derivative interest from the lessee cannot have higher rights than his own assignor. Statutory tenants under special enactments like the Madras Cultivating Tenants' Protection Act are not persons having an estate in relation to the landlord but have got only the limited rights conferred by the statute. A statutory tenant's rights are purely personal to him and neither the heirs nor an under-lessee from such tenants can claim to have any interest in the demised property derived from the chief tenants. A sub-lessee or under-lessee from a cultivating tenant is wholly outside the scope of the Madras Act XXV of 1955.

(1959) 1 M.L.J. 25, approved. Case-law reviewed.

K. Raman and *V. Ratnam*, for Petitioner.

M. S. Sethu, for Respondent.

R.M. ——— *Petition allowed.*

Veeraswami, J. Sree Sidhi Budhi Vinayagar Devasthanam *v.* Marimuthu.
11th November, 1960. S.A. No. 35 of 1959.

Presidency Small Cause Courts Act (IX of 1887), *section* 47—*Scope and obejct of.*

Madras City Tenants Protection Act (II of 1922) *as amended by Act XIX of* 1955, *section* 10—*Person dispossessed by a void order of Court—If could claim the benefit of protection.*

The object of section 47 of the Presidency Small Cause Courts Act is to stay the execution of an order made under section 41, the validity of which order will depend upon the suit instituted by the occupant. The language of the section is explicit and mandatory and it directs the Court not to proceed with execution until the suit is disposed of. The section does not even seem to contemplate that the proceedings in execution should be stopped or suspended only upon an order of stay being made. The order for possession stands by operation of the section itself. A delivery of possession of immovable property effected in contravention of the section will be one without jurisdiction and will therefore be void. Whether there is a stay order or not by the Court, if a suit is instituted as contemplated by section 47 the bar to execution of the order of eviction would automatically come into play and would be effective until the disposal of the suit.

A tenant who is otherwise entitled to the benefit of the protection of the Madras City Tenants' Protection Act, as amended by Madras Act XIX of 1955, will not lose the protection merely because he has been dispossessed prior to the coming into force of the amending Act by an order of Court which is without jurisdiction and is voi d.

T. R. Sangameswara Ayyar, for Appellant.

R. Rangachari and *R. Raghunathan*, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan and Kailasam, JJ. Ramachandra *v.* Kuppuswami.
15th November, 1960. C.R.P. No. 61 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 6-*A—Applicability—Transfer of suit from civil Court—When could be ordered.*

In order to attract the provisions of section 6-A of the Madras Cultivating Tenants' Protection Act three conditions must be fulfilled. First the defendant must be a cultivating tenant; secondly he must be entitled to the benefits of the Act and thirdly he must, on transfer of the proceedings from the civil Court to the Revenue Divisional Officer, be in a position to obtain one or other of the statutory reliefs provided in his favour under the Act. Without a concurrence of these three conditions no transfer of a suit could be ordered by a civil Court under the provisions of section 6-A of the Act. No such transfer could be ordered on any *prima facie* finding. Before a civil Court decides not to try a suit on the ground that the defendant is a cultivating tenant entitled to the benefit of the Act, it must reach a definite conclusion and must record a comprehensive finding that it has no jurisdiction to deal with the matter.

A suit for injunction *simpliciter* before a civil Court cannot automatically become converted into a petition for restoration to possession by the tenant under the Act when once it is transferred to the Revenue Divisional Officer on a tentative finding by the civil Court that the defendant is a cultivating tenant. The period of limitation prescribed under section 4 (3) of the Act creates a vested right in the landlord and there could in such circumstances be no question of any automatic conversion of one relief into something else which the party entitled has not sought for. In a suit for injunction in a civil Court to restrain the defendant from interfering with the plaintiff's possession and enjoyment of the lands, the defendant could not claim

any relief or benefit under the Act, even if he is a cultivating tenant, merely by changing the forum of adjudication shifted from the civil Court to the Revenue Court. A Revenue Court under the Act cannot grant any remedy by way of injunction.

(1958) 1 M.L.J. 232, (1958) 2 M.L.J. 184, differed.

(1960) 2 M.L.J. 26 (N.R.C.), referred.

(Case-law reviewed and discussed).

R. Viswanathan, for Petitioner.

K. Raman, for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
17th November, 1960.

Kothandapani *v.* Seetharama.
A.A.O. No. 75 of 1960.

Practice—Execution—Court auction sale—Confirmation of—Nature of—Inadequacy of price—Relevant factors to be considered.

The condition as to confirmation of sale held in execution by a Court is intended to safeguard against irregularity or fraud in connection with the sale and against the property being sold at an inadequate price. The Court has undoubted discretion in refusing to accept, the highest bid at the auction held in pursuance of its orders, should that price be deemed inadequate. But, it is not in every case where a higher offer is made subsequent to the auction that a Court will be justified in refusing the highest bid at the auction. No hard and fast rule could be laid in such cases and the Court has to decide each case on its own merits. While the Court should no doubt see that an adequate price is fetched for the property sold, it is not desirable to refuse to accept the highest bid in the auction merely in the hope that some better price will be fetched if a resale is held. It is equally undesirable that sales held in pursuance of orders of Court should be nullified after a lapse of long time without any material to show that the previous sale was in anyway objectionable, merely because higher offers are forthcoming at that time.

K. S. Naidu and *R. Vijayan*, for Appellant.

V. Seshadri and *G. Viswanathan*, for Respondent.

R.M. ——— *Appeal allowed.*

Ramakrishnan, J.
17th November, 1960.

Mohd. Burhanuddin *v.*
Official Trustee of Madras.
C.R.P. No. 1477 of 1959.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *sections* 30 *and* 35 *—Effect of—Proceedings pending against orders under the earlier Act—If could be continued.*

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 4*—Fixation of fair rent —Principles of.*

It is no doubt true that section 30 of the Madras Act XVIII of 1960 exempts certain category of buildings from the operation of the Act. But section 35 (2) of the Act gives continuing effect to the rules, notifications and decisions given under the earlier Act XXV of 1949 and they are deemed to be under Act XVIII of 1960 for the purpose of giving prospective effect. Act XVIII of 1960 does not purport to take away the right of appeal or revision vested in a person under the earlier Act. Where the rights of parties were governed by the earlier Act till the passing of the new Act and a revision petition by the aggrieved party was pending the party will be entitled to obtain his remedy in the Revision under the old Act and section 30 of the new Act cannot divest him of that right.

In fixing fair rent under section 4 of the Madras Act XXV of 1949 the discretion given to the Controller to allow an increase in the rental value as entered in the Corporation books during the basic period, is limited to the maxima provided under section 4 (4) of the Act. In fixing the fair rent under the Act the Court should

no doubt respect the contract between the parties so long as the contract does not provide for a rent that exceeds the maximum fixed by the statute. But in cases where the rent agreed upon under the contract exceeded the maximum fixed by the statute, then on the principle that the tenant cannot contract himself out of the statute which gives him certain privileges, he should be given relief. The tribunals under the Act cannot fix a fair rent and impose other collateral obligations on the tenant regarding payment of tax, etc. All the obligations under a contract should be taken into consideration in arriving at a fair rent, which should be fixed as a definite sum.

V. Govindarajulu, for Petitioner.

O. Radhakrishnan, for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
24th November, 1960.

Murugan Transports *v.* Ratha Krishnan.
W.P. No. 1022 of 1958.

Minimum Wages Act (XI of 1948), *section* 20—*Summary procedure under—If could be availed of by discharged workmen.*

A claim under section 20 (2) of the Minimum Wages Act by discharged workmen, would be cognisable by the authority under sub-section (1) of the section.

(1959) 1 M.L.J. 213, diff.

K. K. Venugopal, for Petitioner.

B. Lakshminarayana Reddy (*amicus curiae*), for Respondent.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J.
30th November, 1960.

Azeez Bivi *v.* Masilamani.
C.R.P. No. 738 of 1960.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956), *section* 14(2)—*Rent Tribunal—Powers of remand —Scope of.*

Before the power of remand could be exercised by the Rent Tribunal under the provisions of the Madras Cultivating Tenants (Fixation of Fair Rent) Act, 1956, it is the duty of the Tribunal to ascertain whether the order of the Rent Court was right or not. The language of section 14 (2) of the Act is clear that a tenant who has not surrendered the excess land before the end of the agricultural year 1957 would not be entitled to apply for fixation of fair rent. A remand made on the assumption that the surrender could be made at any time is not valid and has to be set aside.

T. V. Balakrishnan and *N. Vanchinathan*, for Petitioner.

K. N. Subramanian, for Respondent.

A.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
1st December, 1960.

Parthasarathy *v.* Syed Mahaloo.
C.R.P. No. 975 of 1960.

Practice—Unstamped document impounded and sent for levying duty and penalty—Original lost—Copy in Court—If could be marked in evidence.

Where a document filed in Court has been impounded and sent to the Revenue Authorities for levying the necessary duty and penalty and such duty has been levied and collected but the document is lost, secondary evidence of the document could be let in by marking the copy of the document kept in Court. Such evidence cannot be shut out on the ground that the copy was taken anterior to the impounding of the document and the collection of the stamp duty and penalty.

T. R. Venkataraman, for Petitioner.

V. Srinivasa Ayyar and *K. Raman*, for Respondent.

R.M. ——— *Petition allowed.*

Rajamannar, C.J., and Venkatadri, J. Narasimhalu *v.* Ramanathan.
2nd December, 1960. C.R. P. No. 2168 of 1958.

Civil Procedure Code (V of 1908)—Order 34, rule 14—Prohibition against sale of mortgage property—Scope and object of.

The provisions of Order 34, rule 14 of the Civil Procedure Code are intended to prevent the mortgagor's equity of redemption being lost at the instance of a mortgagee. Hence where a mortgagee obtains a decree on a promissory note executed by the mortgagor for arrears of interest due on the mortgage the mortgagee cannot bring the mortgaged property to sale in execution of the decree as it will be a claim arising under the mortgage. A decree for rent arising out of a lease-back in favour of the mortgagor by the mortgagee in possession as part of the mortgage transaction is a claim arising under the mortgage within the meaning of Order 34, rule 14 of Civil Procedure Code. It is not necessary that the mortgagee should be able to institute a suit for sale in enforcement of the mortgage before the prohibition could apply.

A.I.R. 1956 Rajashthan 121, differed.

K. R. Venkatarama Sarma and *K. S. Venkatarama Ayyar,* for Petitioner.

K S. Desikan and *K. Raman,* for Respondent.

R.M. *Petition dismissed.*

Srinivasan, J. Navaneetham *v.* Gangiah.
2nd December, 1960. C.R.P. No. 2141 of 1959.

Civil Procedure Code (V of 1908), Order 22, rule 3 and Order 1, rule 10—Suit by benamidar—Real owner—When could come on record on the death of benamidar.

Where a suit is laid by an alleged benamidar claiming title in himself and the suit is not laid in any representative character, the purported true owner cannot come on record on the death of the alleged benamidar either under Order 1, rule 10 or Order 22, rule 3 of the Code of Civil Procedure. Such a procedure is possible only if the benamidar is suing in a representative capacity and not otherwise.

R. Krishna Ayyar, for Petitioner.

K. S. Ramamurthi and *K. Sarvabhauman,* for Respondent.

R.M. *Petition allowed.*

Jagadisan and Kailasam, JJ. Sivagaminatha *v.* Nataraja.
12th December, 1960. A. S. No. 112 of 1957.

Civil Procedure Code (V of 1908), section 13—Foreign judgment—When conclusive and binding.

A decree of a foreign Court, even if passed *ex parte* will be binding on the parties thereto and will be conclusive under section 13 of the Civil Procedure Code, if evidence was taken and the decision was given by the foreign Court on a consideration of the evidence. Where the decree of the foreign Court was passed as a matter of course as a result of the default of the defendant in furnishing security as directed, it is not one given on merits and will not be conclusive.

M. Natesan, for Appellant.

M. S. Venkatarama Ayyar and *V. Krishnan,* for Respondent.

R.M. *Appeal dismissed.*

Jagadisan and Kailasam, JJ.
15th December, 1960.

Madras State Electricity Board *v.*
Commissioner of Labour.
W.A. No. 138 of 1960.

Madras Shops and Establishments Act (XXXVI of 1947), *sections* 2 (3) *and* 4—*Commercial establishment of —State Electricity Board—If a commercial establishment—If exempt from the operation of the Shops Act.*

In order to bring a person within the definition of a commercial establishment in section 2 (3) of the Madras Shops and Establishments Act, 1947, all that is necessary is that the person should be a member of the clerical staff employed in the clerical department of an industrial undertaking. It is not necessary that the whole department should be in one particular office.

The Madras State Electricity Board created under the provisions of the Madras Electricity Supply Act, is not a department, agent or servant of the Government nor is it a local authority. Hence the Board is not exempt from the provisions of the Madras Shops and Establishments Act under section 4 (1) (*c*) of the Act. In order to attract the exemption under section 4 (1) (*f*) of the Act the separate law contemplated therein should necessarily be a law which comprises all the details of the Madras Shops and Establishments Act and should in effect and substance cover the same field as covered by the Shops and Establishments Act. A separate law in relation to one or a few of the matters dealt with by the Shops Act cannot to that extent exclude the operation of the said Act.

P. R. Gokulakrishnan, for Appellant.

Messrs. Row and Reddy and the Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. — *Appeal dismissed.*

Kunhamed Kutti, J.
16*th December,* 1960.

Mettur Industries, Ltd. *v.* Velayutha Mudaliar.
C.R.P. Nos. 2103 and 2104 of 1959.

Employees' Provident Fund Act (XIX of 1952), *section* 10 *and Civil Procedure Code (V of* 1908), *section* 60 (k)—*Scope of immunity from attachment in execution of Provident Fund amounts.*

So long as an amount in the custody of a garnishee does not cease to have the character of Provident Fund, either by payment of the same to the employee or removing it from his credit in the accounts, the immunity against attachment in execution will continue by virtue of section 10 of the Employees' Provident Fund Act, 1952 and the provisions of section 60 (*k*) of the Civil Procedure Code.

Messrs. King and *Partridge,* for Petitioner.

K. Kumaraswami Pillai, for Respondent.

R.M. — *Petition allowed.*

Ananthanarayanan, J.
21*st December,* 1960.

E. V. K. Sampath, *In re.*
Crl. Rev. Case Nos. 1228 and 1243 of 1960.

Criminal Procedure Code (V of 1898), *section* 198-*B*—*If offends Article* 14 *of the Constitution of India* (1950).

Section 198-B of the Code of Criminal Procedure does not violate Article 14 of the Constitution of India.

V. P. Raman, for Petitioner in Crl. R.C. No. 1228 of 1960.

P. R. Gokulakrishnan and *S. Jayakumar,* for Petitioner in Crl. R.C. No. 1243 of 1960.

The Attorney-General of India, (*M. C. Setalwad*) The Advocate-General (*V. K. Thiruvenkatachari* and The Public Prosecutor, for the State.

R.M. — *Petition dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
17th January, 1961.

National Cement Mines Industries Ltd. *v.* The Commissioner of Income-tax, West Bengal, Calcutta.
C.A. No. 84 of 1958.

Income-tax Act (XI of 1922)—*Receipt of Revenue nature—Test—Construction of the eed of assignment.*

The question referred to the High Court of Calcutta was "Whether on a proper construction of the Deed of Assignment, dated 7th of May, 1935, and on the facts and in the circumstances of this case, the Tribunal was right in holding that the sum of Rs. 77,820 represented a receipt of a revenue nature in the hands of the Applicant and assessable as such?" On a construction of the Deed of Assignment

Held :—"The appellants had however not sold the entirety of the rights acquired by them from the Karanpura Company. The conveyance was subject to several restrictions and the appellants retained in part rights in the land conveyed. The transaction was substantially a commercial transaction for sharing the profits of the commercial activities of the Associated Cement, Ltd. The High Court was therefore right in holding that the transaction dated May 7, 1935, was a commercial transaction and the payment under clause (1) thereof at the rate of annas 13, per ton of cement sold was of the nature of income and not capital."

N. C. Chatterjee, Senior Advocate, for Appellant.

Hardayal Hardy, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
18th January, 1961.

Mohamed Noorulla *v.* The Commissioner of Income-tax, Madras.
C.As. Nos. 303 to 307 of 1960.

Income-tax Act (XI of 1922)—"*Single business*"—*Test—Co-heirs continuing business —If "association of persons."*

The question referred to the High Court of Madras was: "Whether the income-tax assessment of the business of 'Spade Clover Beedies' belonging to the estate of the deceased and carried on during the previous years 1943 to 1946 as an association of persons for the assessment years 1944-45 to 1947-48 is valid?"

Held : "The question in the present case is as to what income was to be taxed. The income was the income of a business which was carried on as a single business by the consent of all the parties. (Co-heirs of a deceased owner). The mere fact that a suit was pending at the time for the administration of the estate of the deceased or for the separation of the shares of the co-heirs does not affect the incidence of taxation in this case, because, the business was carried on, as said above, as one business with unitary control and by the consent of the parties. The High Court was right in holding that the income was assessable as income of an association of persons.

R. Ganapathy Iyer, for Appellant (in all the appeals.).

K. N. Rajagopal Sastri, Senior Advocate, for Respondent (in all the appeals).

G.R. *Appeals dismissed.*

[SUPREME COURT.]

S. J. Imam, K. Subba Rao and *Raghubar Dayal, JJ.*
20th January, 1961.

Gopal Das Sindhi *v.* The State of Assam. Cr.A. No. 153 of 1959.

Criminal Procedure Code (V of 1898), *sections* 145, 439 *and* 561-*A*—*Penal Code (XLV of* 1860), *section* 448.

" It is true that after the amendment of the Criminal Procedure Code an offence under section 448 of the Penal Code is triable as summons case and committing Magistrate Court adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion that this irregularity does not vitiate the proceedings and is curable by the provisions of section 537, Criminal Procedure Code, as no prejudice to the accused has been established in the case."

"A charge under section 448, Penal Code, had been framed by committing Magistrate and it will be for the Court trying the accused to decide whether any offence had been committed and whether the matter is merely in the nature of a civil dispute rather than an offence having been committed under the Penal Code."

Ram Lal Anand, Senior Advocate, for Appellants.

Naunit Lal, for Respondent No. 1.

Achhru Ram, Senior Advocate, for Respondent No. 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, J.*
20th January, 1961.

The Standard Vacuum Refining Co. of India *v.* Its Workmen. C.As. Nos. 416 of 1958 & 19 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 124 (4)—*Bonus.*

The Court held : " The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be over-estimated either. Having regard to the fact that the distribution of available surplus must inevitably depend in each case on its own facts this Court has generally refused to interfere with the decision of the Tribunal on the ground that any decision on the question of distribution should be left to its discretion. It is only where the award passed by the Tribunal appears to this Court to be wholly unreasonable and to be the result of the failure of the Tribunal to take into account the necessary relevant facts that the jurisdiction of this Court under Article 136 of the Constitution can be successfully invoked. In the present case the Tribunal has considered all the relevant factors and has come to the conclusion that five months' bonus would meet the ends of justice. We do not see any reason to interfere with this award."

M. C. Setalvad, Attorney-General for India, for Appellants (in C.A. No. 416 of 1958) and Respondent No. 1 (in C.A. No. 19 of 1959).

H. R. Gokhale, for Respondent No. 1 (in C.A. No. 416 of 1958 and Appellant in C.A. No. 19 of 1959.)

G.R. *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
31st January, 1961.

Oriol Industries Ltd. *v.* Bombay Mercantile Bank. C.A. No. 221 of 1956.

Companies Act (I of 1956), *section* 89—*Negotiable instrument.*

Although the principle underlying section 89 of the Companies Act (1956) was salutary and afforded protection to a company, it could not be extended to a claim

by the company against a bank. "The said principle in terms is applicable only when a claim is made against a company on a negotiable instrument; in other words, it is only in the matter of enforcement of negotiable instruments against a company that the principle comes into play. It is difficult to see how the principle enunciated in section 89 can be extended to a claim made by a company against a bank".

S. N. Andley, for Appellant.

A. V. Viswanatha Sastri, for Respondent.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur and *J. C. Shah, JJ.*
31st January, 1961.

Union of India *v.* Musaddilal.
C.A. No. 313 of 1956.

Railways Act (IX of 1890), section 77—Scope.

Section 77 of the Railways Act "prescribes a condition precedent to the maintainablity of a claim for compensation for goods lost, destroyed or deteriorated while in the custody of the railway administration. The notice prescribed was not served by the respondent upon the railway administration within six months from the date on which the goods were delivered for carriage and *prima facie* the suit would be barred for non-compliance of a statutory condition precedent".

R. Ganapathy Iyer, for Appellant.

K. P. Gupta, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
1st February, 1961.

Burmah Shell Refineries Ltd. *v.* Their Workmen.
C.A. No. 250 of 1959.

Industrial Disputes Act (XV of 1947)—Bonus—Award for clerical staff.

We find nothing that would justify us in interfering with the conclusion of the Tribunal that the clerical staff should be awarded bonus at the same rate as the operatives."

M. C. Setalvad, Attorney-General of India, for Appellant.

Janardhan Sharma, for Respondent.

G.R. — *Appeal dismissed.*

Jagadisan, J.
1st November, 1960.

Thimmakkal *v.* Kamakshi Ammal.
S.A. No. 795 of 1958.

Transfer of Property Act (IV of 1882), section 56—Marshalling—Scope of.

Where the owner of two or more properties mortgaged sells one of them to another, the purchaser has under section 56 of the Transfer of Property Act, the statutory right to insist on the mortgage debt being satisfied out of the property or properties not sold to him. But this right of the purchaser cannot prejudice the rights of the mortgagee or persons claiming under him. Nor could this right be enforced if there is a contract to the contrary. Section 56 does not operate to curtail or restrict the rights of the mortgagee to recover the mortgage amount from all or any of the items mortgaged in any manner he likes.

T. V. Balakrishnan and *K. R. Natarajan*, for Appellant.

V. C. Viraraghavan, for Respondent.

R.M. — *Appeal allowed.*

Rajamannar, C.J. and *Venkatadri, J.*
18th November, 1960.

Mohammed Abbu Bakker *v.*
Zamindar of Ettiyapuram.
C.R.P. No. 1038 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *as amended by Act IV of* 1956—*Section* 2 (a) *and* (ee)—' *Cultivating tenant'—Meaning of—Contributing physical labour—What amounts to.*

In order to fall within the definition of cultivating tenant a person should carry on personal cultivation which again requires that he should contribute physica-labour. Use of physical labour connotes the idea of physical strain—the use of muscles and sinews—and implies a distinction from mental or intellectual work. Mere supervision of the work of ccultivation or maintaining of account or disbursements of wages will not be such contribution of physical labour as to attract the definition.

(1958) 1 M.L.J. 272 held too wide. English decisions referred.

S. Mohankumaramangalam and *S. Gopalaratnam*, for Petitioner.

R.M. *Petition dismissed.*

Ramachandra Ayyar, J.
24th November, 1960.

Sri Dandapani Power Looms *v.*
C.T.O., Coimbatore.
W.P. No. 809 of 1958.

Madras General Sales-ax Act (IX of 1939), *section* 3 (1) (b), *as amended by Acts XX of* 1954 *and III of* 1956—*Scope and effect—Additional tax on power loom cloth—Liability.*

Under the scheme of sales-tax levied prior to the Amending Act (III of 1956) power loom cloth was not brought within the scope of the additional tax. When section 2 (*b*) of Act XX of 1954 enacted that mill cloth would be liable to additional tax, it did not include power loom cloth. Considered in the context of Act III of 1956, it is clear that prior to the amendment power loom cloth, as distinguished from mill cloth, did not attract the additional tax imposed by Madras Act XX 1954.

M. K. Nambiyar and *K. K. Venugopal*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Rule absolute.*

Rajagopalan and *Srinivasan, JJ.*
24th November, 1960.

M/s. Devi Films (Private) Ltd. *v.*
D.C.T.O., Madras.
T.C. No. 120 of 1958.

Madras General Sales-tax Act (IX of 1939)—*Turnover and Assessment Rules, Rule* 5 (1) (b)—*Hire purchase agreement—Goods returned and liability for unpaid instalments terminated—Allowance permissible.*

In cases of transactions of sale in the form of hire purchase agreement where the goods sold are returned and the unpaid instalments cease to be payable the seller is entitled to claim the total of unpaid instalments and only such instalments as an allowance under rule 5 (1) (*b*) of the Turnover and Assessment Rules.

S. Swaminathan and *K. Ramagopal*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. *Petition allowed.*

Rajamannar, C.J. and Venkatadri, J. Meenakshi *v.* Muthukrihsna.
25th November, 1960. L.P.A. 40 of 1958.

Practice—Courts granting relief—Events subsequesnt to the suit—When could be taken into consideration.

There could be no inflexible rule that in disposing of matters coming before it Courts should never take or should always take into consideration the subsequent events that have come into being after the institution of the proceedings and which were not available to it at any time earlier. It must depend upon the peculiar circumstances of each case. Where fresh evidence is required to substantiate the subsequent events and parties are not agreed on the basic allegations, it is not proper for a Court to take into account the subsequent events and mould the relief in accordance with them.

M. S. Venkatarama Ayyar and *K. Kalyanasundaram*, for Appellant.

P. S. Balakrishna Ayyar, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Ayyar, J. Apparswami *v.*
28th November, 1960. Sri Parvathavardhini, etc., Temple.
C.R.P. No. 1404 of 1959.

Madras Court-fees and Suits Valuation Act (XIV of 1955), section 8—Claim for payment of costs of improvement as a condition of surrendering possession—If a counter-claim.

A claim by a defendant in a suit for possession of property, that he should be paid the cost of improvements effected by him as a condition of the decree for possession, is neither a claim for set off nor one by way of counter-claim and section 8 of the Madras Court-fees and Suits Valuation Act cannot apply to such claims.

P. V. Subramaniam, for Petitioner.

K. Raman, for Respondent.

The Government Pleader (*A. Alagiriswami*), for the State.

R.M. *Petition allowed.*

Ramachandra Ayyar, J. Chinnadurai *v.*
1st December, 1960. Court of Wards, Madras.
C.R.P. No. 1055 of 1960.

Madras Court-fees and Suits Valuation Act (XIV of 1955), sections 39, 48 and 50—Administration Suit—Nature of relief claimed.

Where a plaint claims reliefs that the Court may take charge of the suit property and ascertain the shares of the contending parties and distribute the same, it is an administration suit attracting Court-fee under section 39 of the Court-fees Act and Court-fee has got to be levied after the shares are ascertained and before the decree is passed. Neither section 48 nor section 50 of the Court-fees Act could apply to such cases.

P. S. Sarangapani Ayyangar, for Petitioner.

The Government Pleader, for Respondent.

R.M. *Orders accordingly.*

Rajamannar, C.J., and Veeraswami, J. Vanguard Fire and General Insurance Co., Ltd. *v.*
Annamalai & Co., Ltd.
2nd December, 1960. C.C.C.A. No. 68 of 1957.

Insurance Act (IV of 1938), section 31-A—Employing as manager or officer any person whose remuneration takes the form of commission—Employment—What is—Contract of employment in contravention—Effect.

A contract to employ does not necessarily mean to find actual employment nor does it imply that the person employed has to follow a daily routine of work. Even

a person who is retained to do any kind of service when the need or occasion for such service arises, would be a person employed within the meaning of section 31-A of the Insurance Act and such employment cannot be on the basis of commision or bonus. A contract of employment contrary to section 31-A of the Act will be unenforceable where even a part of the consideration has become rendered unlawful by section 31-A of the Act.

R. Narasimhachari and *N. Varadarajan* for Appellant.

T. K. Subramania Pillai, Chockalingam and *S. Sethurathnam* for Respondents.

R.M. *Appeal allowed.*

Ananthanarayanan, J. Public Prosecutor *v.* Modi.
7th December, 1960. Crl. Rev. Cases Nos. 842 and 843 of 1959.

Sea Customs Act (VIII of 1878), sections 167 (8-l) and 178-A (2)—Scope of.

Section 167 (8-*l*) of the Sea Customs Act is an omnibus provision and before a person could be held guilty of an offence under the section the prosecution must prove by dependable evidence that the goods were smuggled ones. The presumption under section 178-A of the Act will be attracted only in cases where the goods seized fall within the specified class. Merely because a person is in possession of goods, not falling under the category specified in section 178-A, and is unable to account satisfactorily for its acquisition, it cannot be said that an offence under section 167 (8-*l*) of the Act is committed.

R. M. Seshadri and *B. T. Sundararajan,* for Petitioner.

The Public Prosecutor, for the State.

R.M. *Conviction set aside.*

Veeraswami, J. Sankarasubbu *v.* Parvati Ammal.
8th December, 1960. S.A. No. 292 of 1959.

Co-owners—Nature of ownership—Building put up by one co-owner on the joint land—When could be directed to be demolished.

Injunction—Co-owner putting superstructure on joint land—Mandatory injunction to demolish—When could issue.

In the case of co-owners no one can claim an exclusive right to any particular part of the property owned in common and as such an encroachment by a co-owner upon a portion of the common property cannot be equated to trespass. Unless such an encroachment is shown to have been objected to by the other co-owners at the earliest time and is also shown to cause material and substantial injury to the other co-owners which cannot be otherwise compensated, a mandatory injunction to demolish the building will not be issued. A purchaser from a complaining co-owner cannot claim any better right.

R. Ramamurthi Ayyar and *M. D. K. Vallinayakam,* for Appellant.

P. S. Chandrasekara Ayyar and *P. S. Ramachandran,* for Respondent.

R.M. *Appeal allowed.*

Ramachandra Iyer and *Kunhamed Kutti, JJ.* Bibijan *v.* Collector of North Arcot Dt.
14th December, 1960. A.A.O. No. 325 of 1958.

Income-tax Act (XI of 1922), section 46 (2)—Certificate under—If could be executed by a civil Court as a decree.

A certificate of the Income-tax Officer issued under section 46 (2) of the Income-tax Act to the Collector is not a decree of a civil Court and the Collector has

no power to apply for execution of the same to the civil Court. The fact that the Collector can recover the amount by adopting the process of an execution in a civil Court does not mean that the certificate is as such executable by a civil Court.

M. Ramachandran and *T. V. Balakrishnan*, for Appellant.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Appeal allowed.*

Kunhammed Kutti, J.
16th December, 1960.

Alab Bai *v.* Ramanujachari.
C.R.P. No. 1747 of 1959.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *section* 33 (2)—*Applicability.*

Two conditions are necessary before a defendant, who claims to be a prior mortgagee, can be called upon to pay Court-fee on his claim under section 33 (2) of the Madras Court-fees and Suits Valuation Act. The first is that he should pray in his written statement that the amount due on his mortgage or charge be determined. The second is that there shoud be a direction in the decree for the payment of such amount to him.

R. Narasimhachari and *N. Varadarajan*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for the State.

N. C. Raghavachari and *N. S. Varadachari*, for Respondents.

R.M. ——— *Petition allowed.*

Rajamannar, C.J., and
Venkatadri, J.
16th December, 1960.

Madurai Municipality *v.*
State of Madras.
Appeal No. 73 of 1957.

Madras District Municipalities Act (*V of* 1920), *section* 76-*A*(*b*)—'*Municipal Council concerned*'—*Meaning of.*

The expression 'municipal council concerned' which occurs in clause (*b*) of section 76-A of the Madras District Muncipalities Act is practically the same as the expression 'the municipality in which he is employed'. In order to enable the Government to recover from a municipality the salary of a health officer or engineer appointed under section 76-A of the Act, the officer concerned should be in the service of the municipality. In cases where such an officer is suspended and later reinstated, the period of absence being treated as leave or duty, the municipality liable to pay the allowances, etc., of the officer, will be the municipality which he was serving on the date of suspension.

M. K. Nambiyar and *K. K. Venugopal* for Appellant.

The Government Pleader (*A. Alagiriswami*), *R. Desikan*, *K. S. Desikan* and *K. Raman* for Respondents.

R.M. ——— *Appeal allowed.*

Kunhamed Kutti, J.
21st December, 1960.

Ponnuswami *v.* Venkataraman.
C.R.P. No. 1795 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 33, *rule* 1, *Explanation* (*a*) '*Sufficient means*'—*What is.*

The words 'sufficient means to enable him to pay the Court-fee' in rule 1 of Order 33 of Civil Procedure Code is not equivalent to possession of sufficient properties. The possession contemplated is not possession of the requisite property but the means, *i.e.*, the capacity to raise the money necessary for payment of Court-fee. In deciding the question of means it is for the Court to decide, on the facts of each case, whether it should take into consideration or not the subject-matter in dispute.

P. Kothandaraman, for Petitioner.

R. Ramamurthi Ayyar, *C. S. Swaminathan* and *R. Shunmugam*, for Respondent.

R.M. ——— *Petition allowed.*

Ramakrishnan, J.
23rd December, 1960.

Sivathanu *v.* Valliamma.
A. No. 305 of 1957.

Transfer of Property Act (IV of 1882)—Former Travancore State areas— Principle of subrogation—Extent of application—Limitation.

In areas such as the former Travancore State where the Transfer of Property Act was inapplicable, a co-mortgagor redeeming a prior usufructuary mortgage is not subrogated to the rights of the prior mortgagee in the sense that the prior mortgage is kept alive and treated as subsisting for the purpose of construing the period of limitation when the non-redeeming co-mortgagor sues for partition and separate possession of his share of the mortgaged property. It will only be a case of working out the equities between the parties to the limited extent necessary.

The decision of the former Travancore or Travancore-Cochin High Courts have no binding effect on the Madras High Court and are at best considered to have a persuasive value.

T. M. Krishnaswami Ayyar and *A. Balasubramanian*, for Appellant.

S. Padmanabhan, for Respondent.

R.M. *Appeal allowed in part.*

Ananthanarayanan, J.
11th January, 1961.

Ratnamala, *In re.*
Crl. Appeal No. 207 of 1960.

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956), *section* 2 (*a*) *and* (3)*—Brothel—Meaning of—Object of the Legislature.*

The object of the Suppression of Immoral Traffic in Women and Girls Act, 1956, is to prevent commercialised vice and not to penalise an individual prostitute. The idea is not to render prostitution *per se* a criminal offence.

The definition of 'Brothel' in section 2 (*a*) of the Act implies that where a single woman practises prostitution for her own livelihood, without any other prostitute or other persons involved in the maintenance of such premises, her residence will not amount to a brothel. An individual prostitute residing in a place cannot be said to be 'keeping a brothel' so as to attract the penalty under the Act.

(Use of traps and mode of raid—Caution in procedure indicated).

The Public Prosecutor, for the State.

R.M. *Orders accordingly.*

Ramakrishnan, J.
31st January, 1961.

Nallayee, *In re.*
Crl. Appeal No. 624 of 1959.

Criminal Procedure Code (V of 1898), *section* 271 (2)*—Conviction based on plea of guilty —Propriety.*

Under section 271 (2) of the Criminal Procedure Code the Court is no doubt empowered to record the plea of an accused and convict him if the accused pleads guilty. But the conviction need not necessarily follow the plea of guilty. The Court has discretion to accept the plea or proceed to take evidence notwithstanding the plea. Courts will be exercising a wise discretion in not accepting the plea of an accused and proceeding with the recording of evidence.

The Public Prosecutor, for the State.

R.M. *Sentence modified.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
19th January, 1961.

The Union of India *v.* The Maharaja Kishangarh Mills, Ltd., In liquidation.
C.A. No. 252 of 1956.

Central Excise and Salt Act (*I of* 1944)—*Section* 11 *of the Finance Act,* 1950—*Rajasthan Excise Duty Ordinance* (*XXV of* 1949)—*Articles* 278, 279 *and* 295 *of the Constitution.*

It is true that Article 277 has saved, for the time being, until Parliament made a provision to the contrary, the power of the State of Rajasthan to l vy such a duty, but that is only a saving provision, in terms subject to the provisions of Article 278. Thus, the combined operation of Articles 277 and 278 read with the agreement vest the power of levy and collection of the duty in the Union of India. It is only in the absence of an agreement like the one we have in this case that the Rajasthan Government could continue to levy and collect the duty in question. The agreement between the two Governments completely displaced the operation of Article 277 in regard *inter alia* to the levy of this duty so far as the State of Rajasthan is concerned. It is clear, therefore, that the High Court was in error in holding that Article 278 was any answer to the claim of the Government of India and should override the provisions of Article 278 read with the agreement. On a proper construction of these provisions, in our opinion, the result is just to the contrary. In this view of the matter, it is not necessary to consider the other arguments advanced on behalf of the appellants, whether Article 295 should prevail over Article 277.

Gopal Singh, for Appellant.

S. N. Andley, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
20th January, 1961.

Bhagwati Saran *v.* The State of U. P.
Cr. A. No. 16 of 1959.

Iron and Steel Control Order (1941), *section* 11-*B*—*Articles* 14 *and* 19 *of the Constitution.*

Following their earlier decision in (1960)2 S.C.R. 627, the Court held that the constitutionality of section 11-B of the Iron and Steel Control Order has been the subject of elaborate consideration by this Court in the above mentioned case and is therefore, no longer open to argument.

" We consider that there is no material on the basis of which an argument could be sustained that the special conditions to which learned counsel adverted contained any element of unfair or irrational discrimination to attract Article 14 of the Constitution.

R. V. S. Mani, for Appellant.

G. C. Mathur and *C. P. Lal,* for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

A. K. Sarkar and N. Rajagopala Ayyangar, JJ.
25th January, 1961.

The State of Madhya Pradesh *v.*
Ahmadulla,
Cr.A. No. 120 of 1960.

Penal Code (XLV of 1860), *sections* 302 *and* 84—*Scope—Crime by a person of an unsound mind.*

" We consider that there was no basis in the evidence before the Court for the finding by the Sessions Judge that at the crucial moment when the accused cut the throat of his mother in law and severed her head, he was from unsoundness of mind incapable of knowing that what he was doing was wrong. Even the evidence of the father does not support such a finding. The crime was not one committed in a sudden mood of insanity but one that was preceded by careful planning and exhibiting cool calculation in execution and directed against a person who was considered to be the enemy.

I. N. Shroof, for Appellant.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
27th January, 1961.

T. V. R. Subbu Chetty's Family Charities *v.*
M. Raghava Mudaliar.
C.A. No. 204 of 1956.

Hindu Law—Widow's power to alienate—Reversioner's right—Legal necessity.

If a presumptive reversioner is a party to an arrangement which may properly be called a family arrangement and takes benefit under it, he would be precluded from disputing the validity of the said arrangement when reversion falls open and he becomes the actual reversioner. The doctrine of ratification may also be invoked against a presumptive reversioner who, though not a party to the transaction, subsequently ratifies it with full knowledge of his rights by assenting to it and taking benefit under it. It is, however, clear that mere receipt of benefit under an arrangement by which a Hindu widow alienates the property of her deceased husband would not preclude a presumptive reversioner from disputing the validity of the said alienation when he becomes the actual reversioner. It must always be a question of fact as to whether the conduct of the said reversioner on which the plea of ratification is based does in law amount to ratification properly so-called.

Therefore, in our opinion, the conclusion is inescapable that the impugned transfer is not justified by legal necessity.

R. Keshva Aiyangar, Senior Advocate, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent No. 1.

B. K. B. Naidu, Advocate, for Respondent No. 6.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur and J. C. Shah, JJ.
1st February, 1961.

V. R. Subramanyam *v.*
B. Thayappa and others,
C.As. Nos. 321 and 322 of 1956.

Contract Act (IX of 1872), *section* 70—*Compensation*—Quantum meruit.

" If a party to a contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some benefit, the former is en-

titled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him: even if he failed to prove an express agreement in that behalf, the Court may still award him compensation under section 70 of the Contract Act. By awarding a decree for compensation under the Statute and not under the oral contract pleaded, there was in the circumstances of this case no substantial departure from the claim made by the respondent.

S. K. Venkataranga Aiyangar, for Appellant. (In both the Appeals).

B. K. B. Naidu, for Respondents.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
2nd February, 1961.

Satinder Singh & Sardanni Gurdial Kaur *v.* Umrao Singh and the State of Punjab.
C.As. Nos. 396 to 399 and 419 to 421 of 1959 and 152 of 1960.

Land Acquisition Act (I of 1894), sections 4 and 32—Punjab Requisitioning and Acquisition of Immoveable Property Act (XI of 1953).

The Scheme of section 32 of the Land Acquisition Act is that in cases to which the said section applies the Court shall order the compensation amount to be invested in the purchase of other lands which would be held under the right, title and conditions of ownership as the land in respect of which the compensation amount has been deposited. That is the plain effect of section 32 (1) (*a*). Section 32 (1) (*b*) comes into operation if such purchase cannot be effected forthwith and it has to remain in operation until such purchase is made. In other words, if the compensation amount cannot be immediately invested in the purchase of other lands, as an interim measure the said amount may be invested in the prescribed securities and income thereof distributed to those who were entitled to it. Therefore, even if the principle underlying section 32 is extended to the present case on equitable considerations it would not justify the appellant's claim that the compensation amount should itself be treated as corresponding to the corpus of lands acquired and should be permanently invested in suitable securities leaving to the parties concerned the right to enjoy only its income. Such a course is plainly inconsistent with the principle recognised by section 32 (1) (*a*).

M. C. Setalvad, Attorney-General for India, for Appellant (In C.As. Nos. 396 to 398 of 1959) and Respondent No. 2 (In C.As. Nos. 419-421 of 1959 and 152 of 1960.

A. V. Viswanatha Sastri, Senior Advocate, for Appellant (In C. As. Nos. 419 to 421 of 1959 and Respondent No. 1 (In C. As. Nos. 396 to 398 of 1959) and Respondent No. 3 (In C.As. No. 152 of 1960).

G. C. Mathur, for Appellant (In C.A. No. 152 of 1960.)

Gopal Singh, for Respondent No. 2 (In C. As. Nos. 396 to 398 of 1959) and Respondent No. 1 (In C.As. Nos. 419 to 421 of 1959 and 152 of 1960).

G.R. *High Court's decree modified.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K.N Wanchoo, JJ.
3rd February, 1961.

Commissioner of Income-Tax, Bombay City *v.* Dharamdas Hargovandas.
C.A. No. 240 of 1955.

Income-tax Act (XI of 1922), *section* 4 (1) (*b*) (iii) *and section* 60 (2).

The question referred to the High Court was " Whether, in any event, on the facts found by the Tribunal, there was any remittance by the petitioner to Bombay within the meaning of and assessable under section 4 (1) (*b*) (iii) of the Income-tax Act". The relevant words of clause (*b*) (iii) with which we are concerned are these: " are brought into or received in the taxable territories by him during such year ". We have held that this is a case of receipt by the respondent in the taxable territories; it is therefore unnecessary to consider in the present case whether the words " brought into the taxable territories by him " means that the income must be brought in by the person himself as held by the High Court. This being a case of receipt, there can be no doubt that income, etc., was received by the respondent and the indirect method employed in this case for receiving the money would nonetheless make it a receipt by the respondent himself. We are therefore of opinion that the respondent is liable to pay income-tax on the sum of Rs. 50,000 under section 4 (1) (*b*) (iii) of the Act and the question framed therefore must be answered in the affirmative. The result is that the appeal is allowed and the order of the High Court set aside.

Hardayal Hardy, for Appellant.

G. S. Pathak, Senior Advocate, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
3rd February, 1961.

Ranchhoddas Atmaram *v.* Union of India and T. K. Gupta *v.* The State of Bombay.
Petition No. 300 of 1960 and Cr. Appeal No. 107 of 1958.

Sea Customs Act (VIII of 1878), *sections* 19 *and* 167—*Articles* 14, 20 (2) *of the Constitution of India—Section* 23 *of the Foreign Exchange Act*, 1947—*Affirmative and negative sentences distinctive.*

" We have earlier held that either of the two penalties provid ed may be chosen by the authorities concerned as they consi er fit.

" The learned counsel then said that if both the alternatives were available to the authorities concerned to choose from, then the provision would give them a very arbitrary discretion which, whether it offended Article 14 or not, there is no reason to think was intended by the Legislature. We do not think that this argument is of force. Each of the alternative penalties provided, has a limit attached to it. Therefore the discretion is neither unlimited nor arbitrary. It may be that three times the value may amount to an enormous sum but that will be so only when the value of the goods with which the offence is concerned, is high. If goods of high value are the subject-matter of the offence, then there is no reason for saying that the provision for imposing a penalty of three times that value, is not intended by the Legislature.

It would indeed be strange if a statute like the Sea Customs Act, on the proper working of which the finances and commerce of the country largely depend, considered a pecuniary penalty of Rs. 1,000 enough for a breach of any of its provisions. We feel no doubt that the Act did not intend this.

Porus A. Mehta, for Petitioners.

C. K. Daphtary, Solicitor-General of India, for Respondents (In Petition No. 300 of 1960.

Porus A. Mehta, for Intervener.

N. C. Chatterjee, Senior Adocate, for Appellant.

H. R. Khanna, for Respondents (In Cr.A. No. 107 of 1958).

G.R. *Petition and Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ. 23*rd February*, 1961.

Raje Anandrao *v.* Shamrao. C.A. No. 370 of 1956.

Civil Procedure Code (*V of* 1908), *section* 92—*Scope—Modification of a scheme—Procedure.*

It is not necessary to hold that a suit under section 92 in which a scheme is framed providing such a clause is pending for ever. The scheme deals with the administration of the trust and for the purposes of the scheme it would not be wrong or improper to treat a suit under section 92 as analogous to an administraton suit. On that view it would in our opinion be just and convenient to provide for a clause in the scheme which is framed for the administration of the trust to allow for its modification by an application. We therefore accept the view of the Bombay, Calcutta, Allahabad and Patna High Courts in this matter and hold that it is open in a suit under section 92 where a scheme is to be settled to provide int he scheme for modifying it as and when necessity arises, by inserting a clanse to that effect. Such a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purposes of administration, such modification can be made by application under the relevant clause of the scheme without the necessity of a suit under section 92 of the Code of Civil Procedure. Such a procedure does not violate any provision of section 92. The view taken by the Madras High Court that insertion of such a clause for the modification of the scheme is *ultra vires* is incorrect. It was therefore open to the District Judge in the present case to modify the scheme.

A. V. V. Shastri, Shankar Anand and *Ganpat Rai*, for Appellant.

W. R. Barlingey and *A. G. Ratna Parkhi*, for Respondents.

G.R. *Appeal allowed.*

Jagadisan and Kailasam, JJ. 13*th December*, 1960.

Srilasri Subramania Desikar, Pandara Sannadhi *v.* State of Madras. Appeal No. 294 of 1957.

Madras Estates Land (*Reduction of Rent*) *Act* (*XXX of* 1947)—*and Madras Estates Supplementary Act* (*XXIX of* 1956), *section* 3-*A*—*If restrospective in operation.*

Section 3-A of the Madras Estates Land (Reduction of Rent) Act, 1947, introduced by the Amending Act XXIX of 1956 cannot affect suits pending in civil Courts on the date when the Amending Act came into force. The Amending Act does not either expressly or by intendment make the amendment retrospective in operation. Section 3-A of the Act could not therefore deprive the jurisdiction of

c vil Courts to decide suits instituted and pending before them before the date of the introduction of the said section.

(Case-law reviewed—Scheme of the Act analysed).

S. Nagaraja Ayyar, for Appellant.

The Government Pleader (*A. Alagiriswami*) and *R. G. Rajan*, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Iyer and Kunhamed Kutti, JJ.
13th December, 1960.

Sangavi *v.* Sha Devsee Moolchand.
A.A.O. Nos. 219 and 220 of 1958.

Civil Procedure Code (*V of* 1908), *section* 20—*Jurisdiction—Parties agreeing to vest jurisdic ion in one of the two competent Courts.*

Practice—Contract between partie agreeing to vest jurisdiction in one of two competent Courts—Scope of.

It is no doubt true that where there are two competent Courts which can try and deal with the subject-matter of a claim on a contract it would be open to the parties to agree that the disputes arising under the contract should be adjudicated by one of such Courts. It is equally well settled that contracts which attempt to oust the jurisdiction of one of the Courts, which under the law can take cognizance of the suit, will have to be stricitly construed.

Where the clause in a contract stipulated that all proceedings in respect of it shall be taken in a Court of original jurisdiction in Tirupur and it so happens that only a District Munsif's Court exists at that place with limited pecuniary jurisdiction, a suit claiming an amount beyond the pecuniary jurisdiction of the said Court will be outside the purview of the clause. Such a clause cannot be interpreted to mean any Court having original jurisdiction over Tirupur, such as the Sub-Court at Coimbatore. The general rule of construction of a written contract is that its language should be understood in its ordinary and natural meaning even though such a construction may not carry out the purpose, which the parties may be supposed to have intended.

49 C.W.N. 123; (1954) 1 M.L.J. 434, referred.

It will not however be open to the parties by agreement to vest a jurisdiction in a Court which it did not possess and deprive an only Court of the jurisdiction which it has.

V. C. Gopalaratnam, V. Devarajan and *V. S. Rangachari*, for Appellant.

A. Balasubramaniam and *K. N. Venkataramani*, for Respondent.

R.M. *Appeal allowed.*

Ramakrishnan, J.
23rd December, 1960.

Abraham *v.* Varampattu Asirvadham.
Appeal No. 336 of 1957.

Civil Procedure Code (*V of* 1908), *section* 95—*Claim for compensation under.*

Though no special provision is made for the procedure to be followed in dealing with an application for compensation under section 95 of the Civil Procedure Code, still it is clear that the Court cannot provide for compensation under section 95 as part of the decree in the suit itself. The claim for compensation is collateral to the suit leading to an order independent of the decree in the suit, which order is in turn appealable. Hence there should be at least an application before the Court in that

regard, either independently or by way of claim in a counter, a formal notice whereof should be given to the other side and orders should be passed thereon independently.

J. S. Athanasius and *R. G. Rajan*, for Appellant.

V. Ganapatisubramania Ayyar, S. Mohan Kumaramangalam, K. V. Sankaran and *S. Mahadevan*, for Respondents.

R.M. *Appeal allowed in part.*

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Rajagopalan and Srinivasan, JJ.
3rd January, 1961.

Raman Chettiar *v.* Commissioner of Income-tax, Madras.
R.C. No. 114 of 1956.

Income-tax Act (XI of 1922) *sections* 34 *and* 22*—Effect —Scope of—Procedure under —When could be invoked.*

The First proviso to section 34 (1) of the Income-tax Act requires that no notice should issue under the section unless the Officer has recorded his reasons for doing so and the Commissioner is satisfied with such reasons recorded. A notice issued without complying with the requirements of the Proviso will be invalid and subsequent proceedings taken in pursuance of such a notice cannot be valid either. Where an assessee has filed a return in pursuance of section 22 (1) or (2) of the Act, however, belated it may be, the Income-tax Officer cannot ignore the return and proceed otherwise either under section 23 (3) or 34 (1) (*a*). A return submitted in response to an invalid notice under section 34 cannot be related to that notice and could only be treated as a valid return filed by the assessee under section 22 (3) of the Act and it is not open to the Department to ignore the return and issue a fresh notice under section 34 (1) (*a*) of the Act.

S. Swaminadhan and *K. Ramagopal*, for Petitioner.

C. S. Rama Rao Sahib and *S. Ranganathan*, for Respondent.

R.M. *Answered accordingly.*

Jagadisan J
6th January, 1961.

Sivaji Rao *v.* Akilandeshwari Ammal.
S.A. Nos. 37 and 38 of 1959.

Landlord and tenant—Darkhast grants—Tenant if could question validity of grant—Jurisdiction of Court.

It is well settled law that procedural irregularities, if any, occurring in the course of proceedings, for grant of Government lands cannot vitiate the grant and it is beyond the competence of civil Courts to set aside the grant or refuse to recognise its validity. So long as the authorities act within the scope of their powers conferred on them by the rules, it is not upen to the civil Courts to discuss the sufficiency or otherwise of the ground or the regularity of the procedure adopted by them.

T. R. Srinivasan and *T. V. Sadagopachari*, for Appellants.

A. K. Sriraman and *A. Balasubramaniam*, for Respondents.

R.M. *Appeal allowed.*

Ananthanarayanan and Veeraswami, JJ.
23rd January, 1961.

In re Palaniappan.
Crl. Appeal No. 246 of 1960.

Criminal Rules of Practice—Rule 166*—Counsel engaged by State for the defence—Accused repudiating the counsel and desiring to cross examine the witnesses himself—Duty of Court.*

It is true that the provisions of Rule 166 of the Criminal Rules of Practice are mandatory and should be complied with in all cases where applicable. But the

rule does not invest the Court with any authority to permit a counsel to represent the accused even after an express repudiation of that representation by the accused.

Per Veeraswami, J.—"Rule 166 of the Criminal Rules of Practice seeks to safeguard the right of the accused. Where the requisites of that rule are satisfied clearly it is the duty of the Court to appoint a counsel. But that rule in no way affects the right of the accused to defend himself. The fact that an accused is represented by counsel does not in any way stand in the way of the accused cross-examining the witnesses".

G. Gopalaswami, for Appellant.

The Public Prosecutor, for the State.

R.M. *Appeal allowed.*

Kailasam, J.
2nd February, 1961.

Ramadoss *v.* Palanichami.
C.R.P. Nos. 1197 and 2510 of 1960.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 39 (4) *and section* 18—*Period of one month—How computed.*

The period of 30 days prescribed under section 39 (4) of the Madras Hindu Religious and Charitable Endowments Act, 1951 for filing an application to the Court to set aside the order of the Commissioner is to be computed from the date of the receipt of the order by the aggrieved party, *viz.*, hereditary trustee. The section does not contemplate excluding the time taken for disposing of a revision petition filed under section 18 of the Act.

The Advocate-General (*V. K. Tiruvenkatachari*), *T. P. Gopalakrishnan* and *A. Narayanaswami*, for Petitioner.

V. C. Srikumar and The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. *Petition allowed.*

Rajagopalan and Srinivasan, JJ.
7th February, 1961.

Santhosha Nadar *v.* First Assistant Income-tax Officer, Tuticorin.
W.P. No. 1011 of 1958.

Income-tax Act (*XI of* 1922), *section* 46 (2) *and Madras Revenue Recovery Act* (*II of* 1864)—*Certificate issued for a particular sum—Subsequent payment and reduction of amount due—Duty of Collector to bring the properties of assessee for sale for the exact amount due.*

It is no doubt true that when once a certificate is issued under section 46 (2) of the Income-tax Act for a specific amount as arrears of tax, the fact that subsequently the arrears were reduced by payment will not vitiate the certificate itself and the Collector has jurisdiction to recover the balance on the basis of the original certificate itself. But under the Revenue Recovery Act the Collector has no jurisdiction to bring any property to sale to recover a sum larger than what is legally due on the date of notice of attachment. Hence where a notice of attachment mentioned a larger amount than what is actually due on that date a sale held in pursuance of it will be vitiated.

M. R. M. Abdul Kareem and *T. Martin*, for Petitioner.

C. S. Ramarao Sahib, for Respondent.

R.M. *Order accordingly.*

Kailasam, J.
22nd November, 1960.

Godavari Bai *v.* Seshadrinathan.
C.R.P. No. 1208 of 1959.

Evidence Act (*I of* 1872), *section* 34—*Scope of.*

It is no doubt true that entries in books of account regularly kept in the course of business are relevant under section 34 of the Evidence Act. But as provided in the illustration to the section itself the entries by themselves are not sufficient to charge any person with liability for the debt unless there is evidence to prove the debt.

K. Parasaran, for Petitioner.

T. R. Ramachandran, for Respondent.

R.M.

Petition allowed.

Jagadisan and Kailasam, JJ.
12th December, 1960.

Arumugha Chettiar *v.* Kuppuswami Chettiar,
Appeal No. 8 of 1957.

Deeds—Construction—Release deed—If could be construed as conveyance.

Even though a deed may be styled as a ' release deed ' if the intention to transfer any right of the executant in the subject-matter of the deed is clear, the document could be treated as a conveyance.

T. K. Subramania Pillai, for Appellant.

T. R. Ramachandran and *V. S. Ramakrishnan*, for Respondents.

R.M.

Appeal allowed.

Veeraswami, J.
12th December, 1960.

Lakshmanan Chettiar *v.* Mamdan Chettiar.
S.A. No. 219 of 1959.

Limitation Act (*IX of* 1908), *Article* 116—*Suit for compensation for breach of warranty of title—Starting point for limitation.*

In cases where immoveable property is purchased without taking physical possession from the vendor and the vendee has to institute a suit against third parties for recovering physical possession, the breach of covenant as to title as between the vendor and vendee could be reasonably said to occur only when it is found, as a result of the suit by the vendee against the third parties, in possession, that the vendor has no title. Hence for a vendee's suit for compensation against his vendor for breach of warranty of title and possession the starting point for limitation under Article 116 of the Limitation Act will be the date of the dismissal of his suit against the third party.

K. S. Ramamoorthy and *T. R. Mani*, for Appellant.

K. S. Champakesa Iyengar and *K. C. Srinivasan*, for Respondents.

R.M.

Appeal allowed.

Veeraswami, J.
13th December, 1960.

Sri Bava Oushadeswara Swami *v.* Subbaiah Mudaliar.
S.A. No. 221 of 1959.

Practice—Contracts—Enforcement—Court—If has power to relieve parties from their obligation on grounds of equitable principles.

Courts can only look to the terms of the contract between the parties and enforce them subject to the law. There is no power in Courts to depart from the terms of a contract and relieve a party from his obligation under it on grounds of equitable principles.

T. M. Chinnayya Pillai, for Appellant.

K. S. Naidu and *K. S. Bhaktavatsalam*, for Respondent.

R.M.

Appeal allowed.

Ramachandra Iyer and Kunhammed Kutti, JJ.
20th December, 1960.

State of Madras *v.* Thuthukudi etc., Sangam.
Appeal No. 370 of 1957.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 6 (16).—" *Specific endowment* "—*What is.*

In order to constitute a valid endowment it is necessary that the donor should divest himself of the property and in case of dedication to God or to a charity the dedication can be effectuated orally without any necessity for a written instrument. But a mere credit entry in the account books of the donor for a certain charity will not be sufficient to create an endowment unless the amount is set apart and appropriated towards the specific object.

(1945) 2 M.L.J. 164; (1952) 1 M.L.J. 282, followed.

The Government Pleader (*A. Alagiriswamy*) and *R. Desikan,* for Appellant.

S. V. Rama Iyengar, for Respondent.

R.M. — *Appeal allowed in part.*

Rajagopalan and Srinivasan, J.
3rd January, 1961.

Perianna Pillai *v.* Commissioner of I.T., Madras.
R.C. No. 132 of 1956.

Income-tax Act (*XI of* 1922), *section* 13, *Proviso—Rejection of assessee's books of account—Conditions necessary for.*

What the Proviso to section 13 of the Income-tax Act requires is that the system of accounting adopted by the assessee should be defective, before the department could reject the books of account of an assessee. On the only ground that the gross profits as disclosed by the accounts of an assessee is low, in comparison with others in similar trade, the system of accounting adopted by an assessee cannot be rejected.

K. Srinivasan and *D. S. Meenakshisundaram,* for Appellant.

C. S. Rama Rao Sahib and *S. Ranganathan,* for Respondent.

R.M. — *Reference answered in favour of assessee.*

Veeraswami, J.
4th January, 1961.

Kailasa Reddiar *v.* Ponnammal.
S.A. Nos. 1050 and 1951 of 1957.

Civil Procedure Code (*V of* 1908), *section* 47—*Party to suit struck off under Order* 10, *rule* 2—*When could be deemed to be a party defendant for purposes of section* 47.

Whether a person who has been exonerated from a suit and has been struck off as improperly impleaded, under the provisions of Order 10, rule 2 of the Code, could nevertheless be deemed to be a party defendant for purposes of section 47 of the Code is one of substance and not of form. An order exonerating a party from a suit may be made on several grounds and whether or not such a person could still be deemed to be a party for certain other purposes will depend on the circumstances of each case having regard to the pleadings and the scope of the order of exoneration.

A. Sundaram Iyer, for Appellant.

T. P. Gopalakrishnan, for Respondent.

R.M. — *Appeal dismissed.*

Kailasam, J.
2nd February, 1961.

Ganesa Mudaliar *v.* Chellammal.
C.R.P. No. 1525 of 1959.

Madras City Tenants' Protection Act (*III of* 1922)—*Applicability—Benefits of the Act—New tenancy—When could be inferred.*

The Madras City Tenants' Protection Act confers the benefit under it on tenants holding over at the commencement of the Act. Where a tenant continues on the land on the same conditions as before, the mere fact that a fresh lease-deed was executed by him does not disentitle him from claiming the benefits of the Act. If there are any variations in the terms of the tenancy it will be a new tenancy and the tenant will not be entitled to the benefits of the Act. The burden is on the landlord to prove that there has been a variation of the terms of the tenancy.

I.L.R. (1940) Mad. 172; (1945) 2 M.L.J. 190; (1948) 1 M.L.J. 274, referred.

S. V. Kumaraswami, for Petitioner.

B. Kalyanasundaram, for Respondent.

R.M. — *Petition allowed.*

Srinivasan, J.
2nd December, 1960.

Swami Nelliappar, etc., Devasthanam *v.* Sri Navaneethaswami, etc., Temple.
S.A. No. 415 of 1959.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 62—*Scope of—Effect of appointment of Receiver.*

Section 62 of the Madras Hindu Religious and Charitable Endowments Act, 1951, places a restraint upon the powers of a Civil Court and prohibits any stay of the order of the Commissioner framing a scheme till the disposal of the suit. The expression "shall have no power to stay the Commissioner's order" is compendious and the object of the prohibition is to postpone whatever relief the Court is called upon to grant to the stage of final determination of the suit. Hence, when a Court appoints a Receiver in such a suit, it cannot have the effect of staying the operation of the order of the Commissioner and the competency of the Executive Officer remains unaffected and he could take such steps in relation to the administration of the temple under the scheme in so far as they did not interfere with the Receiver appointed by the Court.

B. V. Viswanatha Iyer and *R. G. Rajan*, for Appellant.

M. Natesan and *N. Ramachandran*, for Respondent.

R.M. *Appeal allowed.*

Kunhammed Kutty, J.
15th December, 1960.

Abdul Muthaliff *v.* Saidoon Bibi.
C.R.P. No. 2138 of 1959.

Madras Cultivating Tenants' (*Payment of Fair Rent*) *Act* (*XXIV of* 1956), *section* 15 *—Exemption under—Land used during the period for raising betel vines—Test.*

The exemption of any land under section 15 of the Madras Cultivating Tenants' (Payment of Fair Rent) Act, 1956, from the operation of the Act would come into play only if the land is used for raising the crops mentioned therein during the period when such land is used for raising as main crop betel vines, etc. The expression "during the period" could have reference only to the period when such crops are actually raised and not to the initial period of the lease. There is nothing under the Act precluding a tenant from using his holding for cultivation of any kind of crop provided it is agricultural or horticultural. Where it is established that only paddy is being cultivated in a land, the mere fact that at an earlier period the land was used for cultivation of betel vines will not take the land out of the provisions of the Act.

S. Mohan and *C. D. Sekkizhar*, for Petitioner.

P. S. Balakrishna Ayyar and *P S Ramachandran*, for Respondent.

R.M. *Petition allowed.*

Anantanarayanan, J.
2nd February, 1961.

Elumalai *v.* Executive Officer, Avadi Panchayat.
Crl.R.C. No. 1453 of 1959.

Madras Village Panchayats Act (*X of* 1960), *sections* 92 (b) *and* 103, *Proviso—Effect—Period of limitation for prosecution—How computed.*

The Proviso of section 103 of the Madras Village Panchayats Act specifically provides that an offence of installing a machinery in contravention of section 92 (*b*) of the Act is deemed to be a continuing offence. This statutory fiction is intended to enable the local authority to have sufficient time to detect the offences under the Act. Hence even though the offence of installation of a machinery may become complete on the installation by a particular date, the offence is deemed to be a continuous one and a prosecution launched within a year of such installation will be within time.

C. K. Venkatanarasimham, for Petitioner.

The Public Prosecutor for State.

R.M. *Penalty reduced.*

M—N R C

Kailasam, J.
2nd February, 1961.

Karuppannan *v.* Sadayan.
C.R.P. No. 2067 of 1959.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 3 (3) (*a*) (*ii*)—*Deposit under—If could be dispensed with.*

Under section 3 (3) (*a*) (ii) of the Madras Cultivating Tenants' Protection Act, 1955, the rent due by a tenant must be deposited within a month after the date on which it accrued, before an application under section 3 (3) (*a*) of the Act could be entertained. Even if the tenant pleads that he has sent the rent by Money Order earlier and it was refused by the landlord his duty to deposit under sub-clause (ii) remains and no discretion is given to the Revenue Court to entertain an application without the deposit being made.

V. Vedantachari, T. Rengaswami Ayyangar, and *A. Venkatesam,* for Petitioner.

V. C. Veeraragavan, for Respondent.

R.M. — *Petition allowed.*

Ramakrishnan, J.
6th February, 1961.

Rajagopal Naidu *v.* Baby *alias* Kandaswami.
Crl.Rev. Case No. 1444 of 1959.
(Crl. Rev. Pet. No. 1350 of 1959)

Madras Village Panchayats Act (X of 1950), *section* 106—*Sanction under—When necessary.*

In order to attract the necessity of a prior sanction under section 106 of the Madras Village Panchayat Act, analogous to the general provision in section 197 of the Criminal Procedure Code, there must be a reasonable connection between the act complained of against the Government servant and the discharge of his official duty. Where an Executive Officer of a Panchayat while attending a meeting of the Panchayat, though in his capacity as such, uses obscene language, beyond the recognised limits of discussion of matters relating to his official duties, or loses temper and assaults some one it cannot be said that he was acting in the legitimate discharge of his official duties. In such cases no prior sanction is necessary before prosecuting the offender.

Messrs. John and Row and *S. Nainar Sundaram,* for Petitioners.

Public Prosecutor, for State.

K. Narayanaswamy Mudaliar, for Respondent.

R.M. — *Petition dismissed.*

Srinivasan, J.
24th February, 1961.

Mohanambal *v.* Selvanayaki.
C.R.P. No. 35 of 1960.

Madras City Tenants' Protection Act (III of 1922), *section* 4 (2)—*Order under determining the compensation—When could be made.*

The stage at which the Court is called upon to determine under section 4 (2) of the Madras City Tenants' Protection Act, the amount of compensation payable for the superstructure, is the date on which the Court comes to the conclusion that the landlord is entitled to vacant possession. The Act does not contemplate an order determining compensation and directing its payment at any point of time anterior to the final determination of the ejectment application itself. Any such order made during the pendency of the ejectment application, independent of it, will not amount to an interim order within the meaning of section 4 (2) of the Act.

N. Gopalakrishnan and G. Varadappa, for Petitioner.

K. Srinivasan and *K. Shanmugam,* for Respondent.

R.M. — *Petition allowed.*

[SUPREME COURT.]
J. L. Kapur and J. C. Shah, JJ.
6th February, 1961.

Jethanand and Sons *v.* The State of Uttar Pradesh.
C.As. Nos. 421 to 423 of 1957.

Civil Procedure Code (*V of* 1908) *as amended by Act* (*LXVI of* 1955), *section* 109 (1)(c) —*Scope—Certificate of fitness under Article* 133 (1) (*c*) *of the Constitution of India* (1950) *by the High Court—When can be granted—Question of law—Test.*

The High Court assumed that a certificate of fitness to appeal to Supreme Court may be issued under section 109 (1) (*c*) of the Code of Civil Procedure even if the order is not final, and in support of that view, they relied upon the judgment of the Judicial Committee of the Privy Council in (1933) L. R. 60 I.A. 76 : 64 M.L.J. 307, But section 109 of the Code is now made expressly subject to Chapter IV, Part V of the Constitution and Article 133 (1) (*c*) which occurs in that chapter authorises the grant of a certificate by the High Court only if the order is a final order. The inconsistency between section 109, Civil Procedure Code and Article 133 of the Constitution has now been removed by the Code of Civil Procedure (Amendment) Act, LXVI of 1955. But even before the amending Act, the power under section 109 (1) (*c*) being expressly made subject to the Constitution, an appeal lay to the Supreme Court only against judgments, decrees and final orders.

The High Court was of the view that the interpretation of para. 3 of the First Schedule of the Indian Arbitration Act raised a substantial question of law. But by the direction of the High Court, this question was also left open to be tried before the Civil Judge. We fail to appreciate how an observation on a question which is directed to be retried can still be regarded as raising a question of law of great public or private importance justifying grant of a certificate under Article 133 (1) (*c*) of the Constitution.

We accordingly vacate the certificate granted by the High Court and dismiss these appeals with costs.

J. B. Dadachanji, Advocate of *M/s. Rajindar Narain and Co.*, for Appellants.

C. B. Agarwala, Senior Advocate, for Respondent.

G.R. *Appeals dismissed.*

[SUPREME COURT.]
J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
7th February, 1961.

Mahanth Ram Das *v.* Ganga Das.
C.A. No. 432 of 1957.

Court-fees—Grant of time for payment of deficit Court-fees—Practice—Sections 148, 149 *and* 151 *of the Civil Procedure Code* (*V of* 1908).

Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed. We need cite only one such case, and that is in (1925) L.R. 51 I.A. 321 : 47 M.L.J. 441 : I.L.R. 4 Pat. 61 (P.C.). No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council.

We accordingly, set aside the dismissal of the appeal and the suit, and grant the appellant two months time from today for payment of the deficit court-fee.

R. C. Prasad, Advocate, for Appellant.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
9th February, 1961.

Kaushalya Devi *v.*
Baijnath Sayal.
C.A. No. 216 of 1956.

Civil Procedure Code (V of 1908), Order 32, rule 7—Compromise decree against a minor —Section 97 of the Civil Procedure Code—Scope—Appeal against final decree—Validity of preliminary decree—If can be challenged.

It would be idle to contend that what is prohibited is a challenge to the factual correctness of the decree on the merits, because if the said decree is voidable as in the present case, the very point as to its voidable character is a part of the merits of the dispute between the parties. Whether or not Order 32, rule 7 (1), Civil Procedure Code, applies to the case would certainly be a matter of dispute in such a case and the object of section 97 is precisely to disallow any such dispute being raised if the preliminary decree is not challenged by appeal. The whole object which section 97 intends to achieve would be frustrated if it is held that only the factual correctness of the decree cannot be challenged but its legal validity can be even though an appeal against the preliminary decree has not been filed. Therefore, in our opinion, the High Court was right in coming to the conclusion that it was not open to the appellants to challenge the validity of the preliminary decree in the appeal which they had preferred against the final decree before the said High Court.

L. K. Jha, Senior Advocate, for Appellants.

Darya Datt Chawla, Advocate, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
10th February, 1961.

The Amalgamated Coal-fields Ltd. *v.*
The Najapadda Sabha, Chhindwara.
Petition No. 31 of 1959.

Government of India Acts, 1915 *and* 1933*—Constitution of India* (1950)*—C. P. and Berar Act (XXXVIII of* 1948)*—C.P. Local Self-Government Act,* 1920*—Coal tax.*

It is not suggested that " the coal tax " is one specified in any of the sections set out, and hence there was power to levy any other tax including that which is now impugned. The learned Attorney-General however suggested that the tax authorised by section 51, C. P. Act (IV of 1920) should still be somewhat like the taxes referred to in the other sections though not identical with them. Obviously, in the face of the words " other than those...." the rule of *ejusdem generis* is contra-indicated and if so on no rule of construction could " the coal tax " be excluded from the purview of the local authority. We, therefore, hold that the original imposition of the tax in 1935 was valid.

M. C. Setalvad, Attorney General of India, for Petitioners.

B. Sen, Senior Advocate, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, K. C. Das Gupta N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
10th February, 1961.

The Chief Inspector of Mines *v.*
Lala Karam Chand Thapar.
Cr.A.Nos. 98 to 106 of 1959.

Coal Mines Regulations, 1926*—Section* 27, 29, 73 *and* 74 *of the Mines Act,* 1952*—Constitution of India* (1950), *Article* 14*—If violated.*

We have, on all these considerations come to the conclusion that the words " any one of the directors " has been used in section 76 of the Coal Mines Regulations to mean "every one of the directors ", and that the contrary interpretation given by the High Court is not correct.

On the interpretation that "any one of the directors" means "every one of the directors" no question of violation of Article 14 of the Constitution arises.

We, therefore, allow the Appeals Nos. 98 and 99, set aside the orders of the High Court in Writ Petitions Nos. 475 and 476 of 1956 and order that these writ petitions be rejected.

Appeals Nos. 103 and 104 dismissed.

N. S. Bindra, Senior Advocate for Appellatn's in Cr. As. Nos. 98 and 101 of 1959.

G. S. Pathak, Senior Advocate for Appellants in Cr.As. Nos. 102 to 106 of 1959 and Respondents in Cr.As. Nos. 98 to 100 of 1959.

R. Ganapathy Iyer, Advocate, for Respondents in Cr. As. Nos. 102 to 106 of 1959 and Appellants in Cr.As. Nos. 99 and 100 of 1959.

G.R. — *Order accordingly.*

[SUPREME COURT]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ. — Burrakur Coal Co. Ltd. and another *v.* The Union of India.

10th February, 1961. — Petitions Nos. 241 and 242 of 1960.

Coal Bearing Areas (Acquisition and Development Act, (XX of 1957)—Coal Mines (Conservation and Safety) Act, 1952—Articles 19 *and* 31 *of the Constitution of India—Adequate Compensation.*

Here compensation is specifically provided for the land which is to be acquired under the Act. The land includes all that lies beneath the surface or all that is "locked up" in the land. Parliament has laid down in sub-section (5) of section 13 how the value of this land is to be calculated. The contention that the provisions made by Parliament for computing the amount of compensation for the land do not take into account the value of the minerals is in effect a challenge to the adequacy of the compensation payable under the Act. The concluding words of Article 31 (2) preclude such a challenge being made.

P. R. Das and *K. Choudhury*, Senior Advocates, for Petitioners in both the Petitions.

M. C. Setalvad, Attorney-General for India and *B. Sen*, Senior Advocate, for Respondents in both the Petitions.

G.R. — *Petitions dismissed.*

[SUPREME COURT]

B.P. Sinha, C.J., S. K. Das, K. C. Das Gupta, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ. — Banwarilal Agarwalla *v.* The State of Bihar.

10th February, 1961. — Cr.A. No. 131 of 1959.

Mines Act (XXXV of 1952)*—Coal Mines Regulations,* 1957*—Article* 14 *of the Constitution of India* (1950).

There is however no scope in the present case of applying the principle in support of the directory nature of section 59 (3) as laid down in (1958) S.C.J. 150: (1958) M.L.J. (Crl.) 85 : 1958 S.C.R 533. As we have pointed out above, the inconvenience that might be caused by holding regulations made in contravention of section 59 (3) invalid is removed by the provisions of section 60 ; and on the other hand to hold that regulations may be validly made without following the procedure laid down in section 59 even in cases not falling within section 60 is likely to be harmful to public interest, and to cause general inconvenience. It is really a converse case of what the Privy Council had to consider in L.R. (1917) A.C. 170 and this

Court considered in (1958) S.C.R. 533 : 1958 S.C.J. 150 : (1958) M.L.J. (Crl.) 85.

G. S. Pathak, Senior Advocate, for Appellant.

R. Ganpathy Iyer, Advocate, for Respondents.

G.R. ——— *Case remanded.*

[SUPREME COURT].

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
14th February, 1961.

C. Mohammad Yumus *v.* Syed Unnissa.
C.A. No. 512 of 1957.

Shariat Act (XXVI of 1937)—Immemorial Custom—Intestate succession—Muslim Personal Law.

We are unable to agree with the view of the Lahore High Court in A.I.R. 1943 Lah. 219 that a right acquired before 1937 (the date on which the Shariat Act was brought into operation) to bring a suit for a declaration that the alienation by the widow of the last holder who had by custom succeeded to the limited estate left by her husband was not binding upon the reversioner, was not taken away by the enactment of the Muslim Personal Law (Shariat) Application Act, 1937. It may be observed that the Court proceeded merely upon the general presumption against retrospectivity and their attention, it appears, was not directed to the phraseology used by the Legislature to give section 2 a retrospective operation.

Azizuddin, Senior Advocate, for Appellant.

Shaukat Hussain, Advocate, for Respondents Nos. 1 and 2.

G.R. ——— *Appeal dismissed*

[SUPREME COURT].

K. Subba Rao and Raghubar Dayal, JJ.
15th February, 1961.

Teeka and others *v.* State of Uttar Pradesh.
Cr.A. Nos. 79 and 89 of 1959.

Criminal Procedure Code (V of 1898), section 537—Applicability.

Though section 149 of the Penal Code is mentioned in the charge, it is not expressly stated therein that the members of the assembly knew that an offence under section 307 of the Penal Code was likely to be committed in prosecution of the common object of that assembly. Under section 537 of the Code of Criminal Procedure Code, no sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the charge, unless such error, omission or irregularity has in fact occasioned a failure of justice. The question, therefore, is whether the aforesaid defect in the charge has in fact occasioned a failure of justice. The accused knew from the beginning the case they had to meet. The prosecution adduced evidence to prove that the accused armed themselves with lathies and entered the premises of the decree-holder to recover their cattle and gave lathi blows to the inmates of the house causing thereby serious injuries to them. Accused had ample opportunity to meet that case. Both the Courts below accepted the evidence and convicted the accused under section 307, read with section 149, Penal Code. The evidence leaves no room to doubt that the accused had knowledge that grievous hurt was likely to be caused to the inmates of the decree-holder's house in prosecution of their common object, namely, to recover their cattle. We are of the opinion that there is no failure of justice in this case and that no case has been made out for interference.

A. S. R. Chari, Senior Advocate, for Appellant.

G. C. Mathur, Advocate, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K. Subba Rao and
Raghubar Dayal, JJ.
16th February, 1961.

Maharudrappa Danappa Kesarappanavar *v.*
The State of Mysore.
Cr. A. No. 154 of 1959.

Prevention of Corruption Act (IV of 1947)—*Section* 21, *Indian Penal Code—Bombay District Municipal Act,* 1901—*Public servant.*

Clause (10) of section 21 of the Indian Penal Code merely requires that the person should have the duty to expend property for certain purposes. It is not restricted to such cases only where there is no limitation on the exercise of that power of expending property. The Chairman under the Bombay District Municipal Act has the duty to order payment and to spend the money of the Municipality in certain circumstances. We therefore hold that the appellant was a 'public servant' when the alleged offence was committed.

S. N. Andley, Advocate, for Appellant.

R. Gopalakrishnan, Advocate, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar,
K. Subba Rao, K. N. Wanchoo and
J. R. Mudholkar, JJ.
16th February, 1961.

The Prakash Cotton Mills Private Ltd. *v.*
The State of Bombay
(Now Maharashtra).
C.A. No. 759 of 1957.

Bombay Industrial Relations Act (XI of 1947), *section* 114 (2)—*Constitutionality—Article* 19 *of the Constitution of India.*

(*By Majority*).—The agreement in the present case directed to be enforced by the impugned notification is similar in terms and as held in C.A. Nos. 351-356 and 358-369 of 1960, decided on December 7, 1960, it could not be enforced by industrial adjudication against the will of any of the parties. The power of the State Government under section 114 (2) of Bombay Industrial Relations Act being co-terminus with the power of an adjudicator under the Act, such an agreement cannot therefore be directed to be enforced against the will of the appellant even under section 114 (2) in as much as by doing so the State Government would be going beyond the powers conferred on it by that section. The impugned notification therefore must be held to be bad inasmuch as it goes beyond the powers conferred on the State Government under section 114 (2) and must therefore be struck down. We therefore allow the appeal with costs and setting aside the order of the High Court holding that the notification dated July 31, 1956, is beyond the powers of the State Government under section 114 (2) direct that it will not be enforced.

J. C. Bhatt, Advocate, for Appellants.

R. Ganapathy Iyer, Advocate, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and
J. C. Shah, JJ.
16th February, 1961.

The Government of U. P. *v.*
Raja Mohammad Amir Ahmad Khan.
C.A. No. 319 of 1957.

Stamp Act (II of 1889), *sections* 31, 32 *and* 33—*Scope.*

The scheme of the Stamp Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under section 31. If it is properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under section 32 the Collector

will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed documents is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes *functus officio* and the provisions of section 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done.

I.L.R. 59 Cal. 1171; A.I.R. 1930 Bom. 392; I.L.R. 48 Nag. 950 and A.I.R. 1937 Mad. 763, considered.

C. B. Agarwala, Senior Advocate, for Appellants.

V. D. Misra, Advocate, for Respondent.

G.R. ——— *Appeal dismissed.*

Venkatadri, J.
5th January, 1961.

Mohd. Habib Sait Sons *v.* Abdul Rahim & Bros.
C.R.P. No. 807 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*c*)—*Relative hardship—Onus—Factors to decide.*

The burden of proving under section 7 (3) (*c*), *Proviso*, of the Madras Buildings (Lease and Rent Control) Act, 1949, that the hardship caused to him by an order of eviction being made against him will be greater than by refusing it is certainly on the tenant. The expression used is ' hardship ' and not ' inconvenience ' and in deciding the question a Court could consider all the relevant circumstances including the personal hardship to the tenant and the financial grounds of the business and the Court can take into consideration the present and future hardship and the prospects of alternative accommodation. It is mainly for the trial Judge under the Act to arrive at a conclusion as to the relative hardship, which is a question of fact. So long as the finding is based on some evidence an appellate Court will not lightly set aside the finding of a trial Court on the question of hardship. But where there is no evidence of hardship or where the trial Court takes into consideration factors which do not amount to hardship the appellate authority will be justified in interfering with the discretion of the Controller.

C. N. S. Chengalvarayan, for Petitioner.

M. A. Ghatala, for Respondent.

R.M. ——— *Petition allowed.*

Rajamannar, C.J. and Venkatadri, J.
9th January, 1961.

Mohd. Hussain *v.* Ganga Naicker.
L.P.A. No. 7 of 1958.

Practice—Decree for possession of immoveable property and for mesne profits—Partly preliminary and partly final—Mesne profits ascertained at a later date—Execution of decree as to possession—Limitation for—How calculated.

Limitation Act (IX of 1908), *Article* 182—*Date of decree—Decree for possession and mesne profits—Partly final and partly preliminary—Date from which limitation will run.*

A suit for possession of immoveable property and mesne profits is a suit comprising of two claims and where a decree is made for possession it is final as to that part though the part relating to mesne profits may be preliminary pending final determination of the quantum. Although one decree is made it is partly preliminary and partly final and the final part can be executed. Time for such execution for such a decree for possession will run from the date of the decree under Article 182 (3) of the Limitation Act.

T. M. Krishnaswami Ayyar, P. Sharafuddin, V. Venkatesan and *C. F. Louis*, for Appellant.

M. Ranganatha Sastri, for Respondent.

R.M. ——— *Appeal dismissed.*

Kunhamed Kutty, J.
12th January, 1961.

Arasiramani Panchayat *v.*
Sellappa Gounder.
C.R.P. Nos. 2206 to 2208 of 1959.

Madras Village Panchayats Act (X of 1950), *section.* 111 (1)—*Jurisdiction of civil Court to question assessment—When could be invoked.*

In order to get over the bar under section 111 (1) of the Madras Village Panchayats Act, 1950 and invoke the jurisdiction of the civil Court to question the validity of an order of assessment it should be shown that in levying the assessmenr in question the provisions of the Act and rules have not in substance or effect been complied with.

V. P. Raman, for Petitioner.

K. S. Mahalingam (amicus curiae) for Respondents.

R.M. ——— *Petition allowed.*

Veeraswami, J
19th January, 1961.

Gopal Chettiar *v.* Arumugha Naicker.
S.A. No. 358 of 1959.

Madras Agriculturists' Relief Act (IV of 1938), *sections* 3 (iii) (a), 9-*A and* 13—*Rent payable under a lease on lease back from usufructuary mortgage—If interest liable to be scaled down under section* 13.

'Interest' as defined in section 3 (iii) (*a*) of the Madras Agriculturists' Relief Act, is a part of the obligation under the debt. In order to constitute any excess payment over the principal amount, as interest, there should be a nexus between the liability to make such excess payment and the liability to pay the principal. Payments in discharge of obligations arising under different transactions or contracts could not come within the scope of interest as defined. Section 9-A (*a*) (i) of the Act provides specially for cases of lease back in favour of the mortgagor by the usufructuary mortgagee where the rent due will be deemed to be interset on the mortgage. Payment of rent in such cases will not, except under the deeming provision in section 9-A, tantamount to interest and it cannot be scaled down under section 13 of the Act.

K. Parasaran, for Appellant.

T. R. Ramachandra Ayyar, for Respondent.

R.M. ——— *Appeal allowed.*

Veeraswami, J.
16th February, 1961.

Govindaswami Naidu *v.*
Arumugham Pillai.
S.A. No. 401 of 1959.

Madras Estates Land (Reduction of Rent) (Amendment) Act (XXIX of 1956), *section* 3-*A—Jurisdiction of the Collector under—Jurisdiction of civil Courts to decide the question incidentally in a suit—If barred.*

Section 3-A of the Madras Estates Land (Reduction of Rent) (Amendment) Act, 1956, creates a special jurisdiction in the Collector to decide whether a land in a village is or is not ryoti land. It does not take away the jurisdiction of civil Courts to decide the question as to the character of any land in a suit, incidentally for the purposes of granting a relief within its purview. The fact that a special jurisdiction is vested in the Collector to decide a particular fact cannot by implication take away the jurisdiction of the civil Court to decide a similar question incidentally to grant a relief which it otherwisw has.

V. T. Rangaswami Ayyangar and *T. E. Raghavachari,* for Appellant.

R. Gopalaswami Ayyangar, R. Balasubramanyam, M. Ramachandran and *T. V. Balakrishnan,* for Respondents.

R.M. ——— *Appeal allowed—Leave granted*

Rajamannar, C.J.
22nd February, 1961.

Kamalasani *v.* Krishnaswami.
C.R.P. No. 348 of 1960.

Civil Procedure Code (*V of* 1908), *Order* 21, *rule* 90—*Procedure under, to direct security.*

Under the First *Proviso* to Order 21, rule 90 of the Civil Procedure Code, the Court has got a discretion at two stages, *viz.*, at the stage of admitting an application and at a later stage when the Court decides that security for or deposit of the amount of the sale warrant or the sale proceeds, should be ordered. In making an order under the *Proviso* the Court should consider having regard to the facts and circumstances whether to order security or deposit of amount. An order merely directing that cash security is to be furnished is not directing security as per the *Proviso* and is not a proper order.

A. Srirangachari and *Miss. Kamala Seshadri,* for Petitioner.

M. R. Narayanaswami, for Respondent.

R.M. *Petition allowed.*

Jagadisan and Kailasam, JJ.
3rd March, 1961.

Swaminathan *v.*
Sundara Vandayar.
A. No. 3 of 1956 and
C.R.P. No. 55 of 1960.

Madras City Tenants' Protection (*Amendment*) *Act* (*XIII of* 1960), *sections* 2 (1) (*ii*) *and* (*iii*) *and* 9—*Validity—If unconstitutional.*

Section 2 (i), (ii) and (iii) of the Madras City Tenants Protection (Amendment) Act, 1960, classifying buildings into residential and non-residential for purposes of protection is valid and is not discriminatory or unconstitutional. Section 9 of the Act giving retrospective operation to the amendment is not opposed to Article 19 (1) (*f*) or 31 of the Constitution of India.

V. P. Raman, for Appellant.

R. Gopalaswami Ayyangar and *K. N. Balasubramanism,* for Respondent.

The Advocate-General (*V. K. Thiruvenkatachari*) and The Government Pleader (*A. Alagiriswamy*), for the State.

R M *Appeal allowed.*

Ramakrishnan, J.
6th March, 1961.

Kali Thevan *v.* Giriraja Kaling Rayar.
Crl. R.C. No. 122 of 1960.
(Crl.R.P. No. 122 of 1960).

Criminal Procedure Code (*V of* 1898), *section* 145—*Evidence adduced by means of affidavit—Duty of Court to consider.*

While it may not be proper to lay down any general rule for guidance in regard to the consideration of affidavits filed in evidence in proceedings under section 145 of the Criminal Procedure Code it is clear that where the order of the Magistrate has not discussed the effect of the affidavits, especially of persons of the locality acquainted with the state of affairs such as the village head man and the karnam, the order will be improper and should be set aside in revision.

V. Rajagopalachari and *M. S. Sethu,* for Petitioner.

The Public Prosecutor, for the State.

S. Mohankumaramangalam, S. Palaniswamy and *P. S. Madusudanan,* for Respondents.

R.M. *Petition allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
6th February, 1961.

Hazrat Syed Shah Mastarshid Ali Al Quadari *v.* The Commissioner of Wakfs, West Bengal.
C.A. No. 237 of 1956.

Bengal Wakfs Act (XIII of 1934), *section* 40—*Appointment of a temporary Mutawalli:*

Where powers and duties are inter-connected and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and *vice-versa*, the delegation of powers takes with it the duties. The proposition hardly needs authority ; but if one were necessary, reference may be made to *Mungoni* v. *Attorney-General of Northern Rhodesia*, L.R. (1960) A.C. 336.

B. Sen, Senior Advocate, for Appellant.

B. C. Mitter, Advocate, for Respondent No. 1.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
9th February, 1961.

Mallesappa Bandeppa Desai *v.* Desai Mallappa *alias* Mallesappa.
C.A. No. 263 of 1956.

Hindu Law—Joint family—Blending or throwing into the common stock—Effect—Power of a Hindu Female—Surrender by a Hindu Widow—Sanskrit Text of Hindu Law.

Is this doctrine of blending based on any Sanskrit Text of Hindu Law ? According to the decision of the Privy Council in (1931-32) L.R. 59 I.A. 331 : 63 M.L.J. 196 the doctrine is based on the text of Yagnavalkya and the commentary of Mitakshara ; the text of Yagnavalkya reads thus : " In cases where the common stock undergoes an increase, an equal division is obtained " Chapter I, sections 4, 30. In his commentary on this text Vijnyaneshwara has observed as follows : "Among unseparated brothers, if the common stock be improved or augmented by any one of them through agriculture, commerce or similar means, an equal distribution nevertheless takes place ; and a double share is not allotted to the acquirer". Mitakshara, Chapter I, section 4, placitum 31. Sir Dinsha Mulla, who delivered the judgment of the Privy Council in the case of (1931-32) L.R. 59 I.A. 331: 63 M.L.J. 196, has observed that the words of Yagnavalkya mean that " if a member of a joint family augments joint property, whatever may be the mode of augmentation, the property which goes to augment the joint family propery becomes part of the joint family property, and he is entitled on a partition to an equal share with the other members of the family, and not to a double share, as in some other cases dealt with in the preceding verses. This is the placitum on which the whole doctrine of merger of estates by the blending of income is founded " (page 349). It would thus be seen that according to this decision the doctrine of blending or throwing into the common stock is based on the text just quoted.

With very great respect, however, the text of Yagnavalkya and the comments made by Vijnyaneshwara on it do not appear to have any relation to the doctrine of blending as it has been judicially evolved.

Under Hindu Law it is open to a limited owner like a Hindu female succeeding to her mother's estate as in Madras or a Hindu widow succeeding to her husband's estate, to efface herself and accelerate the reversion by surrender ; but, as is well known, surrender has to be effected according to the rules recognised in that behalf. A Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint property belonging to the said family. On first principles such a result would be inconsistent with the basic notion of blending and the basic character of a limited owner's title to the property held by her. This aspect of the matter has apparently not been argued before the Courts below and has not been considered by them. Thus, if the doctrine of blending cannot be invoked in regard to the property

held by Channamma, the appellants' claim in respect of the said property can and must be rejected on this preliminary ground alone.

M. C. Setalvad, Attorney-General for India, for Appellants.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent No. 1.

M. R. Krishna Pillai, Advocate, for Respondent No. 2.

G.R. ——— *Appeal partly allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ. *10th February,* 1961.

Kashinathsa Yamosa Kabadi *v.* Narasingsa Bhaskarsa Kabadi. C.A. Nos. 218-223 of 1959.

Arbitration Act (*X of* 1940), *sections* 12, 27, 32, 31—*Section* 7 *of the Registration Act* (*XVI of* 1908)—*Panchas decision.*

Under section 12, sub-section (2) of the Arbitration Act, where the authority of an arbitrator or arbitrators is revoked by leave of the Court, the Court may order that the arbitration agreement shall cease to have effect with respect to the difference referred. If the decisions of the Panchas had not been accepted by the parties with the revocation of the reference, all proceedings which they had adopted might have fallen through; but the parties did accept the decisons made from time to time and the cancellation of the reference had not the effect of vacating the divisions already made. We are unable to agree with the view of the trial Judge that the cancellation had the effect of nullifying all the interim divisions and that they must be deemed to have been impliedly set aside.

R. B. Kotwal, Advocate, for Appellant (In C.As. Nos. 218 and 219 of 1959), Respondent No. 1 (In C.As. Nos. 220 and 222 of 1959), Respondent No. 2 (In C.A. No. 221 of 1959) and Respondent No. 5 (In C.A. No. 223 of 1959).

Dr. W. S. Barlingay, Senior Advocate, for Appellants (In C.As. Nos. 220 and 221 of 1959), Respondents Nos. 124 (In C.As. Nos. 218 and 223 of 1959) and Respondents Nos. 3 to 6 (In C.As. Nos. 219 and 222 of 1959).

Naunit Lal, Advocate, for Appellants (In C.A. Nos. 222 and 223 of 1959, Respondent No. 6 (In C.A. No. 218 of 1959), Respondent No. 1 (In C.A. Nos. 219 and 221 of 1959) and Respondent No. 3 (in C.A. No. 220 of 1959).

R. Gopalakrishnan, Advocate for Respondents Nos. 5 (*a*) to 5 (*c*) (In C.A. No. 218 of 1959) Respondents Nos. 2 (*a*) to 2 (*c*) (In C.As. Nos. 219, 220 and 222 of 1959), Respondents Nos. 3 (*a*) to 3 (*c*) (In C.A. No. 221 of 1959) and Respondents Nos. 6 (*a*) to 5 (*c*) in C.A. No. 223 of 1959).

G.R. ——— *Appeals partly allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, and K. C. Das Gupta, JJ. *17th February,* 1961.

M/s. China Cotton Exporters *v.* Beharilal Ramacharan Cotton Mills, Ltd. C.A. No. 331 of 1956.

Contracts—Breach of contract—Conditions of fulfilment of the contract.

We are, therefore, of opinion that the Courts below were right in thinking that the shipment time was guaranteed, and time was of the essence of the contract. Quite clearly however the question whether delivery should be spread over the period arises only in case of instalment contracts. There is nothing however before us to show that the defendants' contract with its Italian suppliers was an instalment contract. In the absence of the contract or any other circumstances justifying a conclusion that it was instalment contract it is not possible to accept the contention of the learned Attorney-General that the defendants' Italian suppliers would be bound to spread the supply over the period October/November, 1950.

M. C. Setalvad, Attorney-General for India, for Appellants.

Purshottam Trikamdas, Senior Advocate, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao K. N. Wanchoo and K. C. Das Gupta, JJ.
20*th February*, 1961.

The Custodian of Evacuee Property, Bangalore *v.* Khan Sahab Abdul Shukoor.
C.A. Nos. 101-104 of 1957.

Mysore Administration of Evacuee Property (Emergency) Act (XLVII of 1949)—*Second (Eemergency) Act (LXXIV of* 1949)—*Powers of Custodian-General under Administration of Evacuee Properties Act (LXVI of* 1950).

We are, therefore, of opinion that considering the purpose for which the Act was passed and the successive saving clauses in the Second Mysore Act and in the Administration of Evacuee Property Act, 1950, the Custodian-General had the power under section 27 to call for the record of the proceeding in which the order of August 22, 1950, was passed and consider its legality or propriety and pass such order in relation thereto as he thought fit. Even if the notice of October, 1950, may be open to question as it was issued before Act LXVI of 1950 was passed, there can be no doubt that the order of February, 1952, under section 27 was passed after hearing the parties and would be valid and within the jurisdiction of the Custodian-General when it was passed. Therefore, the order of the Custodian-General, dated February 11, 1952, being within his jurisdiction would not be liable to be set aside on a writ of *certiorari* as if the Custodian-General had acted without jurisdiction.

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent.

G.R. *Appeals allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, and K. C. Das Gupta, JJ.
20*th February*, 1961.

Sarda Prasad *v.* Lala Jamna Prasad.
C.A. No. 276 of 1956.

Hindu Law—Joint family—Powers of a Karta *of a Hindu joint family to take possession under a decree for partition on behalf of minors.*

In L.R. 40 I.A. 132 : 25 M.L.J. 150, their Lordships of the Privy Council held that in view of the provisions of section 462 of the then Code of Civil Procedure (which corresponds to Order 32, rule 7 of the present Civil Procedure Code) the managing member who had been appointed a guardian in the suit had no authority to enter into any compromise or agreement purporting to bind the minor. This principle has been applied also to cases where the provisions of Order 32, rule 6, would apply and so it has been held in numerous cases in India that the *Karta* of a Hindu joint family though guar-dian in the suit cannot give a valid discharge in respect of a claim for a decree for " money or other movable property ".

In the pressent case however there is no scope for the application of either the provisions of Order 32, rule 6 or Order 32, rule 7 of the Code of Civil Procedure. Neither is this a case of a receipt of any money or moveable properties ; nor is there any question of entering into an agreement or compromise on behalf of the minor. For, clearly acceptance of delivery of possession of property in terms of the decree in a partition suit can by no stretch of imagination be considered as entering into any " agreement or compromise."

S. P. Sinha, Senior Advocate, for Appellants.

G. C. Mathur, Advocate, for Respondent No. 1.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
21st February, 1961.

The Commissioner of Income-Tax, Bombay City *v.* M/s. Filmistan Ltd.
C.A. No. 451 of 1960.

Income-tax Act (XI of 1922), section 30—Right of appeal under.

The question referred to the High Court was " whether the appeal filed before the Appellate Assistant Commissioner on 20th April, 1955, became a proper and complete appeal though barred by limitation and the Appellate Assistant Commissioner should have decided the question of the condonation of delay ?"

In our opinion the meaning of the words "no appeal shall lie" in the Proviso to section 30, Income-tax Act, is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until the tax has been paid. The question will then have to be decided whether there was sufficient cause for condonation of delay and that is exactly what the Tribunal had ordered and that in our opinion is the effect of the Proviso to section 30 (1) read with sub-section (2) of section 30 of the Act.

K. N. Rajagopal Sastri, Senior Advocate, for Apppellant.

Bishan Narain, Senior Advocate, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
21st February, 1961.

Devidas *v.* Shrishailappa.
C.A. No. 112 of 1957.

Civil Procedure Code (V of 1908), Order 6, rule 17—Addition of parties—Effect on limitation.

If fresh parties are merely joined for the purpose of safeguarding the rights subsisting as between them and others claiming generally in the same interest, the determination of the date of the institution of the suit as regards such freshly joined parties does not ordinarily affect the right of the original plaintiff to continue the suit and will not attract the application of the general provisions of the Limitation Act. Addtion to the suit of any member of the branch to which the plaintiffs belonged would only mean setting out the name of such a person *eo nomine.*

Purshottam Trikamdas, Senior Advocate, for Appellants.

C. K. Daphtary, Solicitor-General of India, for Respondents Nos. 1 and 3.

B. R. L. Iyengar, Advocate, for Respondents Nos. 6 to 9.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah, and J. C. Shah, JJ.
22nd February, 1961.

The Commissioner of Income-tax, Andhra Pradesh (Hyderabad) *v.* M/s. Bhikaji Dadabhai & Co.
C.A. No. 434 of 1960.

Income-tax Act (XI of 1922)—Hyderabad Income-tax Act—Finance Act, 1950.

The following questions were referred to the High Court of Judicature at Hyderabad.

(1) Whether on 31st October, 1951, the Income-tax Officer, Warrangal Circle, had the power to impose a penalty under section 40 (1) of the Hyderabad Income-tax Act in respect of the assessment for the year 1357 F. ?.

(2) Whether the assessee had a right to appeal against the order of the Income-tax Officer imposing the penalty ?

(3) If the Appellate Assistant Commissioner did not have jurisdiction to hear the appeal whether the order of the Appellate Assistant Commissioner is a nullity and therefore the order of the Income-tax Officer erroneous, though it may stand until it is set aside by a competent authority?

Held :—We are, however, unable to agree with the High Court that because of the repeal of the Hyderabad Income-tax Act by the Finance Act, 1950, the power to impose a penalty in respect of the years preceding the date of repeal was lost.

Manifestly, by section 13, the Hyderabad Income-tax Act, ceased to have effect as from April 1, 1950. But the operation of that Act in respect of levy, assessment and collection of income-tax and super tax in respect of periods prior thereto for which liability to income-tax could not be imposed under the Indian Income-tax Act, 1922, was saved.

We are of the view that the High Court erred in holding that the proceedings for imposing the penalty could not be continued after the enactment of section 13 (1) of the Finance Act, 1950.

K.N. Rajagopal Sastri, Senior Advocate, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondents.

G.R. *Appeal allowed.*

[Supreme Court.]

P.B.Gajendragadkar, and K. N. Wanchoo, JJ.
24th February, 1961.

E. V. Balakrishnan *v.* Mahalakshmi Ammal.
C.A. No. 86 of 1957.

Succession Act (XXXIX of 1925), *section* 89—*Will—Artificial rule of construction evolved in England to avoid uncertainty—If to be applied in India.*

Where it is not possible to say on the construction of a will that the testator himself indicated the selection or appointed a third person to make the selection but still intended to make a gift which could be made certain by selection made by the legatee, the English rule of construction that in such cases the testator intended the legatee to select should be applied in India also and the decision in *Narayanosami Gramani's case* (I.L.R. 18 Mad. 460), is correct. The fact that there are ways of partition available to agriculturists in India would make no difference to the application of the rule, for we take it that there are ways of partition available to parties in England also. The application of this rule would avoid unnecessary litigation also, for once it is known that in such cases the selection is with the legatee the difficulty arising out of such wills could be easily resolved without recourse to Courts. For this reason also we think that this rule of benevolent construction of wills of this description should be applied to India also.

M.C. Setalvad, Attorney-General for India, for Appellant.

A.V. Viswanatha Sastri, Senior Advocate, for Respondents.

G.R. *Appeal dismissed.*

Anantanarayanan, J.
10th March, 1961.

Rajangam, *In re.*
S.C.M.P. No. 33 of 1961.

Criminal Procedure Code (*V of* 1898), *sections* 426 *and* 561-*A—Inherent powers of High Court to grant bail.*

Quaere :—Whether the High Court has any inherent power to grant bail under section 561-A of the Criminal Procedure Code apart from the specific provision of section 426 of the Code?

V. P. Raman and *P. N. George*, for Petitioner.

The Public Prosecutor, for the State.

R.M. *Petition dismissed.*

Veeraswami, J.
14th March, 1961.

Abdul Rahim *v.* State of Madras by Accommodation Dy. Tahsildar.
Crl.R.C. No. 527 of 1960.
(Crl.R.P. No. 511 of 1960).

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), sections 6 (2) (a) *and* 16 (1)—*Premium—What is—Payment of a lumpsum under a lease with stipulation as to its repayment on the tenant vacating—If in contravention.*

The word ' premium ' in section 6 (2) (*a*) of the Madras Buildings (Lease and Rent Conyrol) Act, 1949, is used in contradistinction to the word rent, which is normally payable periodically. Where an amount is received under a lease, not as a price but as money refundable on the heppening of a stipulated event, it cannot be held to be a premium. What is contemplated as premium in the context is some payment in the nature of a price and which is not refundable. The expression ' or other like sum ' in the clause should be understood *ejusdem generis* to the word ' premium ' and only a payment which has some resemblance to what is comprehended by the word premium will come within the scope of the words 'or other like sum '. The *Proviso* regarding receipt of advance limited to two months cannot have the effect of converting the refundable deposit into a premium.

N. Sivamani, Syed Asim and *K. K. Mitra*, for Petitioners.

The Public Prosecutor, for the State.

R.M. ——— *Petition allowed.*

Kailasam, J.
6th January, 1961.

State of Madras *v.* L. Ct. S.P. Subramaniam Chettiar.
C.R.P. No. 1559 of 1959.

Provincial Insolvency Act (V of 1920), *sections* 61 *and* 63—*Creditor not proving his debt before the declaration of dividend—When entitled to payment—Priority of debts due to Government—If affected.*

Under section 63 of the Provincial Insolvency Act a creditor who has not proved his debt in insolvency before the declaration of the dividend, will only be entitled to payment out of the monies in the hands of the Official Receiver without disturbing the prior distribution of any dividend declared. But where the dividend has only been declared but not actually distributed, such a creditor will be entitled to be included in the list of creditors and have a fresh dividend declared on that basis.

But this rule could not affect the right of the Government to priority under section 61 of the Act and merely because the Government comes with a claim after the declaration of dividend their right to claim priority is not affected so long as there is money available in the hands of the Official Receiver.

G. Ramanujam, for the Government Pleader (*A. Alagiriswami*), for Petitioner.

T. R. Sundaram, for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer and Kunhamed Kutty, JJ.
3rd March, 1961.

Viswanathan *v.* State of Madras.
Appeal No. 206 of 1958.

Madras Entertainments Tax Act (X of 1939), *section* 7 (1)—*Excess collection of tax from the purchasers of the tickets—Management of the cinema house—If could claim the excess.*

The management of a cinema house is made so to stay the agent of the State for collecting the entertainments tax under the Act and when once the tax is collected and paid to the Government the agency ceases. The agent could have no interest in the collections. If there is any excess payment the agent has no interest in it so long as what is paid is what is collected by way of tax. The amount collected as tax is not the income of the person collecting it and he cannot claim refund from the Government on the ground that what has been collected and paid as tax is in excess of what is properly due to the Government.

T. R. Srinivasa Ayyangar, for Appellant.

The Government Pleader (*A. Alagiriswami*) and *G. Ramanujam*, for Respondent.

R.M. ——— *Appeal dismissed.*

[END OF VOLUME (1961) 1 M.L.J. (N.R.C.).]

THE

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MARCH OF LAW IN 1960.

Long ago, Blackstone wrote that Judges are not delegated to pronounce a new law but to maintain and expound the old law ; that even when an earlier decision is scuttled as contrary to reason the subsequent Judges do not pretend to make new law but to vindicate the old one from misrepresentation; that the prior decision had given, as it were, a false map of the law and the later decision is merely a bit of "revised legal cartography ". This is the conventional view. Modern legal thought no longer subscribes to the view that the Judge merely speaks the law. It recognises that every decision has to be understood with regard to the facts in the case and the question actually decided, that the Courts state the general principles but the force of their observations lies in the application of them, that this application cannot be predicated with accuracy, and that out of such applications rules steadily evolve and grow. During the year under review, as many as 37 decisions of the Supreme Court have been reported in the columns of this Journal in addition to important decisions of the High Court in the several branches of the law. An attempt is made herein to touch upon the decisions so rendered on some of the relatively more important titles of the law.

The Advocate and his duties and privileges : In *G. Vasantha Pai,* In re[1] it is pointed out that an advocate owes a bundle of duties, duty to his client, duty to his opponent, duty to the Court, duty to the profession, and duty to the public and the State ; that *prima facie* his duty is to his client; that in the performance of his arduous duties he must not be hampered by any fear of offending the opposite party or any witness; and, that an advocate cannot be proceeded against either civilly or criminally for any words uttered in his office as advocate.

The High Court and its powers and jurisdiction : In *Nachiappa Chettiar* v. *Subramanian Chettiar*[2], the Supreme Court holds that the term 'Court' in section 23 of the Arbitration Act, 1940, includes the appellate Court, and that where there is an appeal pending against the preliminary decree in a suit and proceedings subsequent to the preliminary decree are pending before the trial Court, it would be open to either the appellate Court or the trial Court to make an order of reference to arbitration in respect of all matters in dispute between the parties. In *Alopi Parshad & Sons* v. *Union of India*[3], the Supreme Court decides that the High Court has jurisdiction to set aside an award on the ground of an error in the making of the award or in any document incorporated with it ; as for instance where in a note appended by the arbitrator stating the reasons for his decision there is found some legal proposition which is the basis of the award and which is erroneous ; but that if a specific question is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point

1. (1960) 1 M.L.J. 21.
2. (1960) 1 M.L.J. (S.C.) 101.
3. (1960) 2 M.L.J. (S.C.) 46.

of law does not make the award bad on its face so as to permit of its being set aside. In *Raja Prasad Singh* v. *Gajadhar Singh*[1], the Supreme Court lays down that when an appeal lies on facts it is the right and duty of the appellate Court to consider what its decision on the question of facts should be, that in reaching a decision it should not lightly reject the trial Judge's conclusions as to the credibility or otherwise of a witness particularly where it is based on an observation of the demeanour of a witness, but that where the question of credibility is not based entirely on the demeanour of the witness but is a matter of inference of one fact from proved primary facts, the Court of appeal is free to reverse the findings if it thinks that the inference made by the trial Judge is not justified. In *G. Vasantha Pai*, In re[2], it is held that while the High Court has undoubted power in a proper case to expunge irrelevant and scandalous remarks made by a subordinate Court against a party or his counsel, it has no such power in regard to the judgment of a Judge of the High Court whether it be on the original side or on the appellate side in civil or criminal proceedings, not only because the judgment is a judgment of the High Court but also because the High Court is a Court of record.

Constitution of India: In *Hamdard Dawakhana* v. *Union of India*[3], the Supreme Court lays down *inter alia* that when an enactment is impugned as *ultra vires* and unconstitutional what has to be ascertained is the true character of the legislation; that for that purpose regard must be had to the enactment as a whole, or its objects, purpose, and true intention, and to the scope and effect of its provisions or what they are directed against and what they aim at; that it cannot be said that every advertisement is a matter dealing with freedom of speech, nor can it be said that it is an expression of ideas; that in every case one has to see what the nature of the advertisement is and what activity falling under Article 19 (1) of the Constitution it seeks to further; that where the advertisement relates to trade or commerce and is not a propagation of ideas, the advertising of prohibited goods or commodities of which sale is not in the public interest cannot be regarded as 'speech' and would not fall under Article 19 (1) (*a*); and, that where the main purpose and true intent of the impugned Act is to prevent self-medication or self-treatment and for that purpose advertisements commending certain drugs and medicines had been prohibited there is no abridgment of a person's right of free speech. *Fedco & Co.* v. *Bilgrami*[4] decides that a provision (clause 9-*a*) in the Imports Control Order, 1955, that a license may be cancelled, if it is found after giving the licensee a reasonable opportunity to be heard to have been obtained by fraud or misrepresentation, is a reasonable restriction in the interests of the general public on the exercise of a fundamental right of a citizen guaranteed under Article 19 (1) (*f*) and (*g*); and that where the petitioners were concerned to show that they were not parties to the fraud rather than to show that there was no fraud practised at all, the omission to give particulars of the fraud or inspection of papers cannot be held to deprive the petitioners of a fair chance of convincing the authority that the grounds on which cancellation of the license was proposed did not exist or even if they existed they did not justify the cancellation of the license. In *Chockalingam Chettiar*, In re[5], it is pointed out that since 'extradition' is a subject specifically provided for as the object of legislation under the Constitution the rendition of offenders for extraditable offences cannot be held to be in derogation of the fundamental rights of freedom of movement or residence and that such restriction is in the interest of the general public under Article 19 (5) of the Constitution. *Mohamed Dastagir* v. *State of Madras*[6] decides that before Article 20 (3) of the Constitution comes into play two facts have to be established: (1) that the individual concerned was a person accused of an offence, (2) that he was compelled to be a witness against himself; that where one of these facts alone is established the requirements of Article 20(3) will not be fulfilled; and that where there was no formal accusation against a person relating to the commission of an offence and he had been only asked to produce the money in his pocket which

1. (1960) 1 M.L.J. (S.C.) 33.
2. (1960) 1 M.L.J. 21.
3. (1960) 2 M.L.J. (S.C.) 1.
4. (1960) 1 M.L.J. (S.C.) 71.
5. (1960) 2 M.L.J. 425 (F.B.).
6. (1960) 2 M.L.J. (S.C.) 39.

he was alleged to have attempted to offer to the police-officer, for marking for identification there was no testimonial compulsion since it was within his power to refuse to comply with the police-officer's request, and Article 20 (3) is not attracted. *Bhagwandas Goenka* v. *Union of India*[1] holds that the words ' accused of any offence ' in Article 20 (3) indicate an accusation made in a criminal prosecution before a Court of law or a judicial tribunal where a person is charged with the Commission of an act punishable under the Indian Penal Code or under any special or local law, and that where the Reserve Bank of India acting on information about dollars acquired by a person in the United States of America in addition to the foreign exchange specifically granted to him issued a number of directions to the person at several stages with a view to ascertain the truth of the matter—the questions themselves being dependant upon the explanations furnished by the person—it cannot be said that there was any accusation levelled against that person and Article 20 (3) cannot apply so as to render his testimony inadmissible in evidence. In *Shankarlal* v. *Collector, Central Excise*[2], it is held that the scope of the protection which a witness enjoys against self-incrimination is not quite the same under Article 20 (3) of the Constitution of India as under the American Constitution inasmuch as the former provision is available only in relation to a proceeding in a criminal Court, that a person summoned to appear before the Sea Customs Authorities under section 171-A of the Sea Customs Act is not in the position of a person accused of an offence and he is bound to appear before such Authorities and answer all questions put to him ; that a person who has been examined by the customs officers will not be in the position of an accused till it can be fairly and properly said that he is likely to be proceeded against in a criminal Court ; and that though the question when a person can be regarded as having become an accused would depend on the decision which the departmental officers may take they cannot by merely pretending that they have not made up their minds circumvent the provisions of Article 20 (3). In *Sahibzada Saiyad Muhammad Amirabbas Abbasi* v. *State of Madhya Bharat*[3], the Supreme Court holds that exercising jurisdiction under Article 32 the Supreme Court can grant relief for enforcement only of the rights conferred by Part III of the Constitution, that an alleged right of the petitioner to the guardianship of his minor children under his personal law is not one of the fundamental rights guaranteed to him under the Constitution, and that where the petitioner claims a writ on the plea that the respondents have misappropriated or misapplied the property of his children the matter does not fall within the scope of Article 32. *Mineral Development Co.* v. *State of Bihar*[4], decides that where a legislation (Bihar Mines Act, 1947, section 25) gives the State Government power to cancel a license for *repeated* failure to comply with any of the provisions of the Act, and the State Government cancelled the license as the result of one continuous inspection and without giving an opportunity to the licensee, the action of the Government is not justified and a writ of *certiorari* can be issued. *State of Jammu & Kashmir* v. *Thakur Ganga Singh*[5] lays down that under Article 132 (2) there is no scope for granting Special Leave unless two conditions are satisfied : (1) the case should involve a question of law as to the interpretation of the Constitution, and (2) the said question should be a substantial question of law ; that the principle underlying the Article is that the final authority of interpreting the Constitution must rest with the Supreme Court ; that where the parties agree on the true interpretation of an Article, for instance Article 14, or do not raise any question in respect thereof it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution ; that the interpretation of Article 14 in the context of classification has been finally settled by decisions of the Supreme Court ; that such interpretation is binding under Article 141 on all the Courts within the territory of India ; that what remains to be done by the High Court is only to apply that interpretation to the facts before it ; and that where the only question round which the dispute centered was whether an impugned rule stood the test of

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1. (1960) 2 M.L.J. 458.
2. (1960) 1 M.L.J. 367.
3. (1960) 2 M.L.J. (S.C.) 25.
4. (1960) 2 M.L.J. (S.C.) 16.
5. (1960) 1 M.L.J. (S.C.) 67.

reasonable classification Special Leave to appeal to the Supreme Court under Article 132 (2) cannot be granted. In *Balwan Singh* v. *Lakshmi Narain*[1], the Supreme Court takes the view that merely because an appeal has been admitted by Special Leave the entire case is not at large and the appellant is not free to contest the findings of fact of the subordinate tribunals, that only those points on which Special Leave may initially be granted may be urged at the final hearing, and that normally Special Leave will not be granted by the Supreme Court under Article 136 (1) on a plea of error committed by the Courts below in the appreciation of the evidence. *Rahimtoola* v. *State of Bombay*[2] decides that where the very question raised has been already decided by a Bench of the Supreme Court consisting of five Judges it cannot be said that a substantial question of law as to the interpretation of the Constitution arises in the case requiring it to be decided again by a Constitution Bench of five Judges under Articles 143 and 145 (3). *Muthuvelappa Govndar* v. *Deputy Registrar of Co-operative Societies*[3] states that the jurisdiction of the High Court under Article 226 may properly be invoked in cases where the order of the subordinate tribunal is vitiated by error of law apparent on the face of the record and the impugned order quashed, and the fact that there is an adequate alternative remedy cannot be a bar to the issue of a writ of *certiorari*. *Chattanatha Karayalar* v. *Income-tax Officer, Nagercoil*[4], however points out that the existence of an alternative remedy is a material circumstance that is taken into account when the Court is called upon in the exercise of its discretion to issue a writ of *certiorari* under Article 226. *Vellayyan* v. *District Forest Officer*[5] holds that the provision regarding finality of the decisions of Executive Officers has always been understood to refer to proceedings before the Officers and cannot take away the jurisdiction of the High Court under Article 226 to quash a decision of an officer if it is based on a manifest error of law or the decision has the effect of the Officer exercising a jurisdiction which is not vested in him. *Rubalingam* v. *State of Madras*[6] points out that a mere breach of contract is not remediable by a high prerogative writ such as *certiorari*, that the fact that one of the parties to the contract happens to be a Government Officer makes no difference, that where there is no statutory or other legal right in the continuance of a contract entered into with a party the termination of such a contract by the Government without inquiry will not entitle that party to move the High Court under Article 226 on the ground of violation of the principles of natural justice. *Om Prakash Gupta* v. *Commissioner of Police, Madras*[7] decides that barring exceptional cases of *prima facie* perverse orders of refusal of licence it is not within the province of the High Court under Article 226 to examine the correctness of the view taken by the licensing authority whether the appellant is in lawful possession of the premises, equipment, etc., and unless it is established that the licensing authority is compelled by any statutory provision to grant or renew the license no writ of *mandamus* could lie in that regard. In *Venkataraman* v. *Controller of Estate Duty*[8], it is held that a Central legislation adopted by a State under Article 252 cannot have application to that State retrospectively from a date earlier than the date of the resolution of the concerned State Legislature adopting it, that its operation in the State would further depend on the terms of the enactment adopted, and that if under the terms of an enactment so adopted the State is brought within its ambit only from a particular date the Central Act adopted will have operation only from that date with regard to the State so adopting. In *Volkart Bros.* v. *State of Madras*[9], it is held that a sale falling within the scope of the *Explanation* to Article 286 (1) can itself be a sale in the course of inter-State trade and to such a sale the ban imposed by Article 286 will also apply, that if that ban is lifted the question to be considered will be which State can tax the transaction, that in the case of outside sales the Sales Tax Continuance Order will not enable the State from which the seller sold the goods to the buyer outside the State for consumption in that State to tax the transaction, and

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1. (1960) 2 M.L.J. (S.C.) 27.
2. (1960) 2 M.L.J. (S.C.) 11.
3. (1960) 2 M.L.J. 392.
4. (1960) 1 M.L.J. 439.
5. (1960) 1 M.L.J. 434.
6. (1960) 1 M.L.J. 328.
7. (1960) 2 M.L.J. 50.
8. (1960) 1 M.L.J. 385.
9. (1960) 1 M.L.J. 140.

that it cannot be said that irrespective of whether the sales come within the scope of Article 286 (1) (*a*) or whether they were sales in the course of inter-State trade or commerce within the scope of Article 286 (3) the levy will be subject to sales tax under the Sales Tax Continuance Order. *Sreenivas & Co.* v. *Deputy Commercial Tax Officer*[1] points out that Article 286 (3) refers to two types of cases : (1) a law by the legislature of a State imposing taxation, and (2) a law by the legislature of a State authorising the imposition of a taxation ; that the decisions of the Australian Courts interpreting the words ' law imposing tax ' in the light of the constitutional practice in that country cannot be a guide for the interpretation of similar words in Article 286 (3), that the Madras General Sales Tax Act, 1939, is of a composite character and though it could be a law imposing the tax in regard to the sale of most of the commodities the Act is really one authorising the imposition of a tax in regard to such goods; and that where after the passing of Act LII of 1952 sales tax legislation was enacted in regard to the commodities declared by the former Act it would require the assent of the President notwithstanding the fact that it merely authorised the imposition of the tax. *Abdul Subban & Co.* v. *State of Madras*[2] lays down that Article 304 (*a*) prohibiting discriminatory taxation could not be construed as in effect to nullify the freedom of inter-State trade guaranteed under Article 301 which contemplates a ban on all heads where discriminatory taxation is possible since otherwise the freedom of inter-State trade guaranteed by the Article could be fettered by taxation ; that having regard to the object of the two Articles no discriminatory power of taxation is vested in any State on goods imported from other States either at the point of import or at any subsequent stage ; and that no State could levy tax on goods having its origin in a different State so as to discriminate it from goods of a similar kind manufactured or produced therein. In *Kapur Singh* v. *Union of India*[3], the Supreme Court holds that by Article 311 a public servant is entitled to show cause against the action proposed to be taken in regard to him, but the exercise of the authority to pass an order to the prejudice of a public servant is not conditioned by the holding of an enquiry at which evidence of witnesses *viva voce*, notwithstanding an earlier and full enquiry before the Enquiry Commission is recorded.

Representation of the People Act:—In *Balwan Singh* v. *Lakshmi Narain*[4], the Supreme Court makes it clear that a petition which sets forth the particulars about the use of a vehicle for conveying voters to and from the polling station with details as to the time and place coupled with as full a statement as possible in support of the plea that the vehicle was hired or procured by the candidate or his agent or another person, substantially complies with the requirements of section 83 (1) (*b*) of the Representation of the People Act, 1951 ; that the corrupt practice being the hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of such conveying of electors to or from any polling station are given section 83 in substantially complied with even if particulars of the contract of hiring as distinguished from the fact of hiring are not given ; that failure to set out the particulars of the contract of hiring or the arrangement of procuring will not render the petition defective ; that where the particulars of corrupt practice are insufficiently set forth the election petition should not be dismissed *in limine* but the tribunal should decide if any objection taken on that ground is well-founded ; that if it upholds the objection it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged and in the event of non-compliance the tribunal may strike out the charges which remain vague ; and that insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars and evidence has been led on the plea raised in the petition, the petition cannot thereafter be dismissed for want of particulars. *Kandaswami* v. *Adityan*[5] points out that

1. (1960) 1 M.L.J. 240.
2. (1960) 2 M.L.J. 542.
3. (1960) 1 M.L.J. (S.C.) 116.
4. (1960) 2 M.L.J. (S.C.) 27.
5. (1960) 1 M.L.J. 420.

section 83 makes a distinction between material facts and particulars, that the function of the particulars is to indicate the nature of the defence expected of the respondent and not to disclose the evidence which the petitioner has to let in, that as the particulars serve the double purpose of enabling the respondent and the Court to concentrate on the real point in controversy the Election Tribunal has the power to call for such particulars, that the amendment of section 83 (3) in 1956 does not make any difference since section 90 (1) of the Act which attracts the provisions of the Civil Procedure Code to the trial of an election petition is comprehensive enough to include such a power, that the Tribunal cannot direct the pleadings to be struck off without a prior order directing the furnishing of particulars, that in cases where general corrupt practice of bribery is alleged the particulars cannot be precise as to the date, time or names of all persons bribed and therefore a general statement of the character and extent of the corruption alleged will suffice, and that it is always open to the respondent in such cases to apply for directions regarding further particulars. *Kandaswami* v. *Adityan*[1] lays down that though the procedure followed in enquiries in election petitions is civil in form yet the trial is a quasi-criminal trial especially when the results and consequences like penalties, fines and disqualification that follow from the election petition are kept in view, that the standard of proof is the same as could be achieved in a criminal trial, and it cannot be contended that if a *prima facie* case against the respondent is made out it is for the respondent to rebut the *prima facie* case made against him. *Balwan Singh* v. *Lakshmi Narain*[2] makes it clear that it is not the contract of hiring but the fact of hiring for conveying voters to and from the polling station that constitutes a corrupt practice under section 123 (5), and that in considering whether a corrupt practice described in that section is committed the conveying of electors cannot be dissociated from the hiring of the vehicle.

Industrial Disputes Act and the Industrial Disputes Appellate Tribunal Act.—In *Trichy Srirangam Transport Co.* v. *Industrial Tribunal*[3] it is held that whatever matter is referred to a Tribunal by the Government should be present before it, and if any party fails to press any such claim he cannot be allowed to raise it again in relation to that period ; that adjudications which have become final cannot be re-adjudicated even before an Industrial Tribunal ; that the provisions of *res judicata* are not peculiar to the Civil Procedure Code but are applicable to all proceedings involving adjudication of disputed rights, and that an Industrial Tribunal deciding a dispute under the Industrial Disputes Act is not precluded from directing the introduction of a provident fund scheme for the workers in the establishment concerned in the dispute. *Express Newspapers* v. *Industrial Tribunal, Madras*[4] lays down that in matters of discipline such as the dismissal of a workman for misconduct it is not for the Tribunal to take evidence and decide for itself whether the workman in question merited dismissal; that all that it could decide is whether there was want of good faith on the part of the management or whether there was any basic error or violation of the principles of natural justice ; and that while it is impossible in an establishment to define exhaustively all the duties which a particular workman is to do it is clear that a compositor in a press will be under an obligation to do the work of joining which is part of his legitimate duies. In *Manager, Hotel Imperial* v. *Chief Commissioner, Delhi*[5], the Supreme Court points out that where the two parties to the dispute are clearly indicated, namely, the employer which is in management of the Hotel and the workmen employed in the Hotel, the reference is valid in spite of mention therein that the workmen will be represented by a specified union in the dispute ; that though the reference mentioned the union itself such union can be served through some officer, such as its president or secretary ; and it is that officer who will really represent the workmen before the Tribunal ; that it is unnecessary for the purposes of section 10 where the dispute is of a general nature relating to the terms of employment or conditions of labour of a body of workmen to mention

1. (1960) 2 M.L.J. 100.
2. (1960) 2 M.L.J. (S.C.) 27.
3. (1960) 2 M.L.J. 22.
4. (1960) 1 M.L.J. 96.
5. (1960) 1 M.L.J. (S.C.) 25.

the names of the particular workmen who might have been responsible for the dispute; and that it is only when a dispute refers to the dismissal, etc., of particular workmen as represented by the union that it may be desirable to mention the names of the workmen concerned. *Thambi Motor Service* v. *Labour Court, Coimbatore*[1] holds that where the appropriate Government have made a reference under section 10 (1) they have no power to cancel or to amend or modify the same; but, at the same time, the Government have got the power to make an amendment by which new items are added to the disputes already referred to a Tribunal and that the inclusion of additional items to the matters to be adjudicated upon by an Industrial Tribunal would not be the exercise of a power to amend an existing reference but rather of a power to make a reference of other disputes. *Ranga Vilas Ginning, Spinning & Weaving Mills, Ltd.* v. *Industrial Tribunal*[2] states that in disposing of an application under section 33 (2) for permission to dismiss an employee during the pendency of the adjudication of a dispute the Tribunal has only to consider whether there was a *prima facie* case for the dismissal of the workman or whether there was any unfair labour practice or victimisation involved in the action prosposed to be taken; and, in the absence of any such feature, the Tribunal is bound to give the permission asked for; and it is not for the Tribunal to satisfy itself whether the charges found against the employees have been proved. *Sandanaswami Pillai* v. *Ponnuswami*[3] points out that what section 33-A prohibits is the alteration of the conditions of service in regard to any matter connected with the dispute; that there must therefore be some point of connection between the pending dispute and the act of the employer in respect of which a complaint may be made under section 33-A; that where the question referred to the labour Court was a general one regarding the level of wages in a particular class of industry, retrenchment of any individual worker in any particular establishment engaged in such industry, during the pendency of such a reference cannot amount to a contravention of section 33-A and the labour Court could not get any jurisdiction under it. *M. S. N. S. Transports* v. *Rajaram*[4] expresses the view that section 33-C (2) is wide enough to cover cases where an award gives a benefit to a workman, such as the benefit of back-wages without specifying the amount; that it is open to the labour Court in such cases to determine the amount on the application of the workman; that the term ' back-wages ' in such cases is used to describe the benefit awarded to the workman who was without employment; and it cannot be said that such a claim for back-wages amounts to a claim for ' wages ' within the meaning of the Payment of Wages Act. *Arya Bhavan* v. *Narayana Rao*[5] holds that the question whether a particular workman is or is not a worker concerned in an appeal pending before the Labour Appellate Tribunal is a question of fact depending on the circumstances of each case, and that where a reference is made by the Government of a dispute which relates to the dismissal of one or a few of the workers and dispute is taken up by all the workers represented by the union, the workmen in general and not merely the particular workman who has been dismissed are parties to the reference and they would be workmen concerned in the appeal.

Company Laws: In *The Cauvery Spinning and Weaving Mills, Ltd.*, In re[6], it is pointed out that the Madras City Civil Court is not a ' District Court ' as defined in section 2 (14) of the Companies Act, 1956, so as to empower it to exercise jurisdiction in respect of matters enumerated in section 10; that in the City of Madras the principal civil Court of Original jurisdiction is the High Court in the Original Side and that the matters covered by section 10 (2) should be dealt with only by the High Court in the Original Side. *Southern Automotive Corporation, Ltd.*, In re[7], holds that the duties of the Court under section 394 are onerous and have to be carefully exercised, and the Court can come to the decision required of it only on being satisfied that the matter has been considered at an extraordinary general meeting of the shareholders

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1. (1960) 2 M.L.J. 503.
2. (1960) 1 M.L.J. 483.
3. (1960) 1 M.L.J. 87.
4. (1960) 1 M.L.J. 236.
5. (1960) 1 M.L.J. 49.
6. (1960) 1 M.L.J. 272.
7. (1960) 1 M.L.J.230.

specially called under section 391, that the importance of such a meeting cannot be overlooked, and the shareholders being under a fiduciary responsibility to act in the interest not of the majority only but of the shareholders as a whole can ordinarily function only at the general meeting and at such other extraordinary general meetings as may be convened under the Act, and that where a company seeks the Court's sanction for amalganation with another company and applies for an order dispensing with the convening of an extraordinary general meeting as required by the Act on the ground that there was a general prior meeting of the members at which the arrangement for amalgamation was unanimously approved, the Court will refuse to accede to the request when it is not shown that any hardship or unnecessary undue delay will be caused by compliance with the provisions of section 391. *Indian Commerce and Industries, Ltd.* v. *Free Press Journals*[1] expresses the view that under section 467 the list of contributories should be prepared and settled speedily, that in so settling the Court is not bound by the register of shareholders and has authority to rectify the register and may go into all questions of law and fact to determine the question as to who is the real owner of the shares, that the exercise of the jurisdiction given by the section being discretionary the Court will have to be moved and will not *ex mero motu suo* and therefore whenever an application is made by the Official Liquidator for exercising the powers contained in the proviso to the section it must be scrutinised with great care as the consequences are very large. In *Mrs. N. Wapshare* v. *Pierce Leslie & Co.*[2], it is pointed out that under section 559 a company could be revived or restored by the Court within two years after dissolution under appropriate circumstances, that there are sufficient indications in the Indian Company Law that the shareholders are the residuary legatees of the debts and undistributed or concealed assets of a defunct company unlike the case in England where the Crown is the legatee under the doctrine of *bona vacantia*, and that a suit by the former share-holders of a defunct company to recover assets concealed by fraud is maintainable.

Law of Contracts : In *Alopi Parshad Sons, Ltd.* v. *Union of India*[3], the Supreme Court makes it clear that in India, in the condified law of contracts it cannot be held that a change of circumstances completely outside the contemplation of the parties at the time the contract was entered into will justify the Court while holding the parties bound by the contract in departing from its terms; that the Indian Contract Act does not enable a party to ignore the express covenants of the contract and to claim payment of consideration for performance of the contract at rates different from the stipulated rates on some vague plea of equity; and that the Court cannot absolve a party from liability to perform his part of the contract merely because of an uncontemplated turn of event (namely, heavy increase in prices of the commodity contracted for due to outbreak of war) the performance of the contract became onerous. *Abdul Malick Saheb* v. *Muhammad Yousuf Sahib*[4] points out that transactions in the nature of a bounty from a child to a parent are in equity looked upon with caution by the Court; that it is the duty of the donee to prove that the gift was the result of free exercise of independent will; and the Court must be satisfied that the donee was acting independently without any influence from the donor; and the mere existence of the fiduciary relationship of parent and child between the donor and the donee raises a presumption of undue influence, and it is for the donor to rebut the presumption. *Vedachala Mudaliar* v. *Rangaraju Naidu*[5] takes the view that section 69 of the Contract Act can be invoked only where on person pays because he is interested in the payment of what another person is alone liable to pay, but not to a case where contribution is claimed, as for instance, where as a result of wilful wrong-doing on the part of two persons they became jointly and severally liable to pay a penalty to the State and such penalty was wholly recovered from one of them. *Thirumalasubbu Chettiar* v. *Rajammal*[6] points out that the words 'bound by law to pay' in

(*To be continued*)

1. (1960) 1 M.L.J. 146.
2. (1960) 2 M.L.J. 401.
3. (1960) 2 M.L.J. (S.C.) 46.
4. (1960) 2 M.L.J. 355.
5. (1960) 1 M.L.J. 445.
6. (1960) 2 M.L.J. 539.

section 69 do not exclude those obligations of law which arise *inter partes* whether by contract or tort and are not confined only to those public duties which are imposed by statute or general law and extend to any obligation which is an effective bond in law. *Ananthayya* v. *Subba Rao*[1], decides that where there is no relationship of debtor and creditor, or lender and borrower, and the agreement was made out of natural love and affection by an younger brother to an elder brother for the maintenance of the latter and his dependants, by way of a percentage of the monthly income that may accrue, no question of any penalty arises within the meaning of section 74. *Nadar Bank, Ltd.* v. *Canara Bank, Ltd.*[2], declares that section 178 can be relied upon only in cases where the pledgee is aware that the pledgor is a mercantile agent but not in a case where the borrowers were themselves the owners of the goods and were not acting as agents in the customary course of business as such agents. *National Traders* v. *Hindusthan Soap Works, Erode*[3], holds that sections 15 and 16 of the Sale of Goods Act are not restricted to the sale of unascertained goods; that a sale of specific goods with or without any descripion will be within the terms of the sections; that it is a question of the construction of a contract of sale in any particular case whether it is a sale by description; that the effect of the conditions in sections 15 and 16 is to give a right to the buyer to reject the goods in case what was tendered did not answer to the description or was not of merchantable quality and to sue for the price if he had paid the price, or to accept the goods and sue on the basis of warranty for damages; that where the buyer accepts the goods he has to pay the contract price minus any claim for the breach of warranty; and that the measure of damages in such a case is the difference between the value of the goods as delivered and their value if they answered to the contract description. *Abdul Ghani* v. *Periyaswami Chetti & Co*[4], makes it clear that the legal representatives of a deceased partner cannot be validly bound for payment of the partnership debts by an acknowledgment made by the surviving partner after the dissolution of the partnership by the death of the other partner; that the theory of implied agency disappears on the dissolution of the partnership and the Proviso to section 45 of the Partnership Act would apply in such cases; and section 47 which relates to obligations *inter se* the partners so far as it may be necessary for winding up the affairs of a partnership cannot be invoked to bind the legal representatives of the deceased partner merely on the basis of an acknowledgment made by the surviving partner after the date of dissolution.

LAW OF PROPERTY.

In *Ananthayya* v. *Subba Rao*[1], it is pointed out that section 6 (*f*) of the Transfer of Property Act prohibited the transfer of a public office and the salary of a public officer whether before or after it has become payable; that where an agreement does not purport to deal with the salary of a public officer and by itself has nothing to do directly with any public office and no head of a department could under the agreement be requested to deduct for the benefit of the promisee any amount payable to the promisor, section 6 (*f*) cannot be invoked to invalidate it: and that where at the time of the agreement the promisor was only a University student hoping to take a degree and thereafter to make an income either as a public officer or in private employment or in independent practice of a profession and he undertook to pay his elder brother who was educating him, for his maintenance, a specified sum of money every month after the promisor began earning an income, the amount to be paid being based on the promisor's monthly earnings, and there was no obligation to pay the amount out of the salary or income that promisor might make every month, the agreement will not be hit by section 6 (*f*). *Ghulam Ahmed* v. *Basheer Ahmed*[5], states that a person who purchases from some Mahomedan co-sharers accepting without further examination some vague claim to posessory title, when

1. (1960) 1 M.L.J. 164.
2. (1960) 2 M.L.J. 489.
3. (1960) 2 M.L.J. 195.
4. (1960) 2 M.L.J. 43.
5. (1960) 2 M.L.J. 570.

the rightful owner had neither expressly permitted such ostensible title to be flaunted nor impliedly consented to it, cannot invoke section 41 ; that the mere possession of one co-owner cannot amount to the flaunting of an ostensible title against another, particularly among Muslims where ownership or co-ownership in shares is the usual incident of inheritance and that the fact that the vendor or the person from whom the vendor claimed title executed a mortgage in respect of the property would be of no consequence since a mortgagor is only dealing with a limited interest and is not an ostensible owner. In *Bhaskar Waman Joshi* v. *Shrinarayan Rambilas Agarwal*[1], the Supreme Court makes it clear that though according to the Proviso to section 58 (*c*) a transaction shall not be deemed to be a mortgage by conditional sale unless the condition is embodied in the document which purports to effect the sale it does not follow that if it is so embodied a mortgage transaction must of necessity have been intended; the question whether by such incorporation the transaction is to be regarded as a mortgage is one of intention of parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances, the value of the incorporation varying with the degree of formality attending upon the transaction ; that while a mortgage by conditional sale postulates the creation by the transferor of a relation of mortgagor and mortagee the price being charged on the property mortgaged, in a sale coupled with an agreement to reconvey there is no relation of debtor and creditor, nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified ; that what distinguishes the two transactions is the relationship of debtor and creditor, the transfer being a security for the debt ; that the form in which the deed is clothed is not decisive ; that if the words are plain and unambiguous they must in the light of evidence of surrounding circumstances be given their true legal effect ; and that if there is ambiguity in the language the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. *Ghulam Mohamood* v. *Ammani Ammal* [2] lays down that a valid notice to quit under section 106 should determine the tenancy by the time of fifteen days expiring with the end of the month of tenancy ; that the notice should specifically state what the month of the tenancy was; that for a plea that a denial of the lessor's title or disclaimer of tenancy operates as a forfeiture of the lease under section 111 (*g*) the denial and forfeiture must have occurred prior to the suit and should form part of the cause of action on which the suit is based ; and a denial of the tenancy after the suit is instituted will not operate as a forfeiture under section 111 (*g*).

Madras Estates Land Act ; Madras Estates (Abolition and Conversion into Ryotwari) Act ; Madras Estates (Supplementary) Act : In *Vadivelu Mudaliar* v. *State of Madras*,[3] it is pointed out that to ascertain whether a certain enactment applies to a particular case the position as it stands on the date on which the provisions are sought to be applied is material ; that an Act when originally enacted might be applicable to areas within definite limits, but if subsequently certain areas are taken out of the limits, the Act would cease to apply to such areas; that the Madras Estates Land Act is specificaly made inapplicable to the Presidency Town of Madras, and if on the date on which the provisions of the Act are sought to be applied certain areas formerly outside the Presidency Town and as such governed by the Act have become part of the Presidency Town, then automatically the application of the Act would cease to such areas from the date when they came to be so included within the limits of the Presidency Town even though at some time in the past the Act was applicable to the areas ; and that ordinarily the proprietor of an 'estate' would be entitiled to the beds of abandoned tanks and channels within the limits of the 'estate' and the proprietor could validly give a patta in respect of such lands. *Sellappa Goundan* v. *Bhaskaran*[4] decides that for the application of section 3 (2) (*d*) of the Estates Land Act the original grant itself should have been an inam ; and the circumstance that the grant was treated as an inam at the time of the Inam Settlement proceedings, and title deeds

1. (1960) 1 M.L.J. (S.C.) 87.
2. (1960) 2 M.L.J. 351.
3. (1960) 2 M.L.J. 140.
4. (1960) 2 M.L.J. 363.

were issued on that basis cannot affect the original character of the grant; and therefore the grant would not be an inam within the meaning of the Act. *Natarajan Chettiar* v. *State of Madras*[1] makes it clear that an inherent power to review should be presumed in the case of quasi-judicial tribunals like the Estates Abolition Tribunal so as to enable them to rectify an error apparent on the face of the record or for similar adequate reasons; and that a Tribunal like the Estates Abolition Tribunal or Appellate Tribunal constituted under the Madras Estates (Abolition and Conversion into Ryotwari) Act giving a finding in the presence of the parties as to whether a village did or did not fall within the ambit of a relevant provision of the Act must be held to possess an inherent power to review its judgment on due cause being shown. *State of Madras* v. *Kamakshia Pillai*[2] takes the view that where a land which was originally an 'estate' had ceased to be so by reason of the provisions of the Madras Estates (Abolition, etc.) Act and become ryotwari the aggrieved parties should resort to the same remedies as are open to ryotwari ryots, namely, to apply to the revenue authorities for proper remedy; that section 3 vests the 'entire estate' in the Government which would comprise the tanks and the fishery rights in the former 'estate'; that the customary rights of the ryots to fish in the tanks could not avail against the Government; and the fact that no compensation is provided for in respect of such rights, or that no provision is made in the Act for recognition of such rights is no ground to hold that such rights do not vest in the Government. In *Gopalan* v. *Estates Abolition Tribunal*[3], it is held that section 13 (*b*) of the Estates (Abolition, etc.) Act excludes from the category of lands to which the inamdar would be entitled to a ryotwari patta tank-beds although the tank was not in factual existence and had been abandoned as such; that a land would not lose its character as tank-bed merely because cultivation had been carried on by the landholder; that such cultivation was allowed by reason of the right of the proprietor over the property (without prejudice to the rights, if any of the ryots) and not because the land got converted into ryoti or private land; that the existence of a right in the tank which enabled the landholder to cultivate the tank-bed land is by itself of no importance for the purpose of determining the scope of the statutory right which could be claimed under section 13 (*b*) (iii); that under section 20-A of the Madras Estates Land Act the tank-bed land could be converted into ryoti land by an order passed by the District Collector, and that till such an order is made the land would not lose its character by mere non-user of the tank; and that where no such order was made until the date of the notification of the estate under the Estates (Abolition and Conversion into Ryotwari) Act, the land must be held to retain its character as tank-bed land within the meaning of section 3 (16) (*a*) of the Estates Land Act and would fall within the sope of the lands excluded by section 13 (*b*) (iii) of the Madras Estates (Abolition and Conversion into Ryotwari) Act. *Vadivelu Mudaliar* v. *State of Madras*[4] holds that the appropriate provisions of the Estates Abolition Act applicable to the case of a person who has been lawfully in occupation of the bed of an abandoned channel or tank in an erstwhile zemindari and using it as a building site will be section 18. *Pandian* v. *Board of Revenue*[5], expresses the view that the right to hold a private market is not the same as a franchise incidental to the ownership of the 'estate' and would not be lost when the right to the 'estate' is lost on its vesting in the Government under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act; that having regard to the scheme of section 18, a market consisting only of stalls would also be a 'building' and the fact that the stalls were not all pucca masonry construction will not make any difference; that the entire stalls and all the superstructure should be viewed as one unit constituting a 'building'; that a private market will fall within the scope of 'building' in section 18 (4); and that the right to the building secured under that sub-section has to be viewed independently of the right to use the building in the particular way after the notified date. In *Kumararajah of Venkatagiri* v. *State of Andhra Pradesh*[6], the Supreme Court points out that the scheme of section 20 is to render ineffective all rights created after 1st July, 1945, for a period exceeding one year, that the Second proviso makes rights so

1. (1960) 2 M.L.J. 150.
2. (1960) 1 M.L.J. 276.
3. (1960) 2 M.L.J. 182.
4. (1960) 2 M.L.J. 140.
5. (1960) 2 M.L.J. 248.
6. (1960) 1 M.L.J. (S.C.) 28.

created unenforceable against the Government; that even if the creation of such rights is not void but only voidable, all that it would imply is that there should be some overt act of avoidance by the Government and not that the avoidance must be in the terms of the Third proviso; that the Second proviso was enacted to nullify the creation of rights in anticipation of the impending legislation and hence was made unconditional; and the Third proviso deals with the termination of rights created *before* 1st July, 1945; and that when a slate quarrying lease is determined under the Second proviso, the terms as to renewal implied under rule 47 of the Mineral Concession Rules must fall with the lease. *Nanja Raja* v. *Lalitha Ammal*[1] holds that a right of review like a right of appeal is wholly statutory, and in the absence of specific provisions in the Madras Estates (Abolition and Conversion into Ryotwari) Act or the rules made thereunder, the Special Tribunal (High Court) constituted under section 51 cannot have the power of reviewing its order since the Judges of the High Court in hearing an appeal would be functioning as *persona designata*. *Mahomed Ibrahim* v. *Estates Abolition Tribunal, Vellore,*[2] lays down that under section 15 (2) the power of the Tribunal to excuse delay in the filing of an appeal is limited to those cases where the delay did not exceed six months from the date of the order of the Assistant Settlement Officer, but that it is dependent on the terms of the statute and the rules being complied with, and that where there has been a failure to obey the statutory direction it would not be consistent with principle to hold that a person could be affected by an order of which he had no notice delivered on him in the manner provided by the statute.

Bhaskaran v. *Sellappa Goundan,*[3] points out that the Madras Estates (Supplementary) Act, 1956, was enacted to provide the machinery for decision as to whether an area is an 'estate' or not for the purpose of the Madras Rent Reduction Act, 1947, and the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. *Karuppan Chettiar* v. *State of Madras*[4] explains that the nature of the proceedings under section 7 (1) of the Madras Estates (Supplementary) Act is not that of an appeal *simpliciter*, but is in the nature of an application, as the jurisdiction of the Special Appellate Tribunal under the Act is wider than that of the original Tribunal; and that where a party was *bona fide* prosecuting a writ application against the order of the Tribunal the time taken therein could be excluded in computing limitation under section 7 (1). *Sellappa Goundan* v. *Bhaskaran*[5] holds that section 7 (4) makes an adjudication by the Special Appellate Tribunal of the question whether a non-ryotwari area is or is not an 'estate' final and binding on all persons claiming an interest in the lands in such area notwithstanding that any such person was not a party to the proceeding before the Tribunal; that section 6 enables the party interested to appear and put forward his case before the Tribunal with a right of appeal; that section 7 confers a right of appeal on every person aggrieved by the Tribunal's order, and a person aggrieved is one who has suffered a legal grievance by reason of the order, and the term would comprehend a wider category of persons than those who were parties *eo nomine* before that tribunal; that a person whose right or title would be affected by the decision of the Tribunal would be a person aggrieved; that under section 8 there will be a presumption in the case of an inam village that the grant was of the melvaram alone and not of both the varams, but the presumption will not apply where the controversy is whether the grant was of an entire village; and that the proceedings under section 3 being of a judicial nature, the onus would lie on the Government to prove that the grant was of the whole village. In *Bhaskaran* v. *Sellappa Goundan,*[3] it is suggested that section 10 should not be understood as prohibiting the ordinary civil or revenue Courts or other tribunals from deciding the question whether an area is an 'estate' *incidentally* if that were necessary for the purpose of exercising its jurisdiction; that section 11 relates only to those proceedings which if initiated after the Act could be done under section, 3, *i.e.*, a proceeding at the instance of a person interested; and that if the defendant is only a tenant under a terminable

1. (1960) 1 M.L.J. 415.
2. (1960) 1 M.L.J. 347.
3. (1960) 1 M.L.J. 183.
4. (1960) 2 M.L.J. 511.
5. (1960) 2 M.L.J. 383.
6. (1960) 1 M.L.J. 183.

lease he will not be a person interested in the question whether the suit land was situated in an 'estate' or not. *Hariharamuthu Pillai* v. *Rani Subbalakshmi Nachiar*[1], however suggests that under section 11 all proceedings where the question arises whether a particular area formed part of an 'estate' or whether they are only minor inam lands shall be transferred to the appropriate Tribunal for the determination of such question; that the transfer of such suits to the Tribunal is only for the limited purpose of determining that question; that the Tribunal cannot decide any other issue raised in the suit; and that in such cases after the determination of such issues by the Tribunal the suit will have to be retransferred to the Civil Court.

MADRAS CULTIVATING TENANTS PROTECTION ACT.

In *Arumugham Pillai* v. *Tulasi Konar*[2], it is pointed out that the Madras Cultivating Tenants Protection Act is designed to protect from eviction only the actual tillers of the soil and not the intermediaries; that the lessee—a mill owner—who had converted the adjoining land demised for stocking groundnut husk into a cultivable land by cultivating cholam on a part of it cannot thereby acquire the character of a cultivating tenant within the meaning of section 2 (*a*); and the very fact that the lessees had made such an alteration to the detriment of the reversion would constitute an act of waste enabling, the landlord to determine the tenancy. *Munian Muthuraja* v. *Rajaratnam*[3] holds that a person who takes a lease for enjoyment of the usufruct of a cashew-nut plantation on the land is a 'cultivating tenant' as defined in section 2 (*a*) and must be held to be engaged in 'cultivation' as defined in section 2 (*b*); that irrespective of the nature of the produce of the land whatever is grown by the aid of human labour and effort would be an agricultural produce, and the process of producing it would be agriculture; and the lessee in respect of a cashew-nut plantation would be a person enagaged in 'cultivation' and hence entitled to the benefit of section 4-B as amended by Act XIV of 1956. *Ramaswami Raja* v. *Ellappa Goundar*[4], decides that having regard to the scheme of the Madras Cultivating Tenants Protection Act, the Code of Civil Procedure does not wholly apply to the Revenue Courts acting under the Act; that a Revenue Divisional Officer will have no jurisdiction to grant an injunction restraining a landlord from entering his property; and that there is no inherent power in the Tribunal in that behalf and such a power cannot be assumed by implication. *Periyaswami* v. *Muthiah Chettiar*[5] lays down that what is contemplated by section 3 (3) (*b*) is only the deposit of a 'sum' which means an amount of money, and not the aggregate of the paddy rent as well as the costs; that a Revenue Divisional Officer acting under section 3 (4) (*b*) can only direct a deposit of the rent in terms of its money equivalent and not in kind; that it is open to the Revenue Divisional Officer in the exercise of his discretion to give him time to deposit the rent; and that the discretion would incluse a power to refuse to grant time and pass an order for eviction without giving the defaulter an opporunity to deposit the arrears of rent. *Muthukumara Padayachi* v. *Sambandan Pillai*[6] decides that since the ascertainment of the arrears of rent by the Revenue Divisional Officer must be in terms of cash and the direction must be to pay them into Court and not to the landlord, an order of the Revenue Court ascertaining the arrears of rent payable by the tenant in kind and directing that if the tenant failed to pay the same on or before a certain date and report the fact the next day, eviction would follow is illegal; and that a determination of fair rent will hold good for five years after such determination but cannot be made retrospective. *Chinnamuthu Kandar* v. *Ganapathi Pillai*[7], points out that the provisions of section 3 enjoin the Revenue Divisional Officer to hold a summary inquiry and pass appropriate orders on a petition filed under the section for eviction on the ground of default in the payment of rent; that in the absence of such inquiry the Revenue Divisional Officer will have no jurisdiction to pass an order for possession against a tenant on the basis of a compromise agreement entered into in previous proceedings which agreement had gone beyond the subject-matter of the proceedings; and that the Revenue Divisional Officer will have no

1. (1960) 1 M.L.J. 232.
2. (1960) 2 M.L.J. 143.
3. (1960) 2 M.L.J. 475.
4. (1960) 2 M.L.J. 555.
5. (1960) 1 M.L.J. 194.
6. (1960) 1 M.L.J. 20.
7. (1960) 2 M.L.J. 370.

jurisdiction to execute a decree which embodies terms beyond the scope of the petition itself. *Panchapakesa Iyer* v. *Subramania Moopan*[1] expresses the view that restoration to possession of a cultivating tenant under section (4) (1) will be barred only if such restoration is not possible as a result of another tenant being in *bona fide* possession of the land and who does not fall within the terms of the proviso ; and that where some other tenant enters into possession of the land but surrenders the possession before the application of the former tenant for restoration of possession there is no bar to an application under section 4 (1). *Muhammad Badsha Saheb* v. *Duraiswami Goundan*[2], holds that section 6-A does not by itself effect an automatic transfer of the suits referred to therein from the civil Court to the Revenue Divisional Officer without an order of transfer being made by the civil Court on whose file such suits or proceedings are pending ; hence where a suit or proceeding is pending on the file of a civil Court it is open to that Court to make an order for restitution to possession to the aggrieved party before transferring the suit to the Revenue Divisional Officer; and sections 4 and 6 will not bar the civil Court from making such an order. *Periyaswami* v. *Muthiah Chettiar*[3], decides that section 13 does not have the effect of nullifying the provisions of section 3 of Madras Act XXV of 1955 especially where there is no provision in the Fair Rent Act for enforcing the orders made thereunder.

MADRAS AGRICULTURISTS RELIEF ACT.

In *Somasundarathu Odayar* v. *Kalyanasundarathu Odayar*[4], it is pointed out that the effect of *Explanation III* to section 8 of the Madras Agriculturists Relief Act is to emphasise the identity of the debt ; that so long as the identity can be traced any changes or alterations in the debtor or creditor will not take away the case from the ambit of the *Explanation* ; that a debtor cannot be denied the advantages of section 8 even if certain inter-current transactions have entered into the stream of transactions ; that the fact that the renewal does not take account of the statutory reduction of liability will be immaterial; that it will always be open to the debtor subsequently to plead failure of consideration to that extent ; and that a transaction purporting to be a settlement of accounts cannot *ipso facto* have the effect of preventing the debtor from tracing back the debt in order to obtain relief under the Act. *Rajagopalan Chettiar* v. *Ishack Rowther*[5] makes it clear that section 9-A would apply only to a case where the mortgagor seeks to rendeem a subsisting mortgage ; that in a case where the mortgaged property had been taken over by the Government under the Madras Estates (Abolition and Conversion into Ryotwari) Act no question of the redemption of the mortgaged property could arise ; and therefore, where an erstwhile mortgagor applies for payment, out of the compensation amount after making provision for payment to the mortgagee of the estate, no case of redemption can arise, and section 9-A will not apply and the debt cannot be scaled down. *Balasubramania Thevar* v. *Nallamuthu Moopanar*[6], expresses the view that under section 9-A (9) (*a*) (1) as amended in 1950, the rents paid towards a lease by a mortgagor who had taken the mortgaged properties back on lease should be deemed to be the interest and section 8 or 9 read with section 12 or 13 as the case may be should be applied to scale down the debt ; that the *Explanation I* to section 8 cannot however apply, because it has not been enacted that the person making the payment must also be deemed to have considered himself as a debtor repaying a creditor and demanded to have exercised a right of appropriating those payments in a particular manner, either by actually appropriating them towards interest in writing or failing to do ; and the Court to give effect to the legal fiction in section 9-A will assume the existence only of those facts on which the fiction could operate, and cannot create further legal fictions which have not been enacted in order to make applicable a certain state of rights which does not flow or follow from the assumption of the identity *per se* which the legislature has actually enacted. *Ammalu Ammal* v. *Samalam Iyer*[7], expresses the view that section 8 and *Explanation III* thereto can not apply

1. (1960) 1 M.L.J. 349.
2. (1960) 1 M.L.J. 413.
3. (1960) 1 M.L.J. 194.
4. (1960) 1 M.L.J. 225.
5. (1960) 2 M.L.J. 495.
6. (1960) 2 M.L.J. 116.
7. (1960) 2 M.L.J. 158.

to the case of a unsufructuary mortgage in which no special provision is made for interest on the principal amount secured in addition to the provision for the enjoyment of the usufruct instead of interest in view of section 10 (2); and that under section 9-A (3) (11) it is only where any interest on the principal amount has been stipulated for in addition to the usufruct from the property that section 8 and *Explanation III* would apply. *Thulasi* v. *Ammayappa Pillai*[1], lays down that where the decree of the original Court, so far as the applicant for relief under the Madras Agriculturists Relief Act is concerned, has become final long before the commencement of the Amendment Act XXIII of 1948, but an appeal is filed against a part of the decree by persons other than the applicant and in respect of matters other than that in which the applicant is interested, and a decree passed in such appeal after the commencement of the Amending Act, the latter cannot be availed of by the applicant; and that when the decree sought to be scaled down has been satisfied by deposit into Court of the amount directed by the decree to be paid to the plaintiff, and all that remains is only a direction to the defendant to deliver possession of the concerned properties to the plaintiff section 16 (ii) of the Amending Act can have no application. *Logambal Achi* v. *Muthia Pillai*[2] expresses the view that under the provisions of section 18, when a suit is filed after 1st October, 1937, even where the suit has been instituted for the proper amount as per the provisions of the Act as it then stood, if the ultimate scaled down amount for which the decree is passed is different due to the subsequent amendment of the Act, the plaintiff can be awarded costs only on the basis of the scaled down debt. *Balasubramania Thevar* v. *Nallamuthu Moopanar*[3], points out that sections 19 and 20 have to be read together and the explanation of the expression 'Court which passed the decree' in section 20 equally applies to section 19: and that even when an appellate Court had confirmed or modified the decree, still the Court to which an application lies under section 19 is the Court of first instance which passed the decree. See also *Ramanathan Chettiar* v. *Ramanathan Chettiar*[4], which further decides that section 19 (2) as amended in 1948 rendered the provisions of sections 19 (1) applicable to the decrees passed after the main Act; that in order to obtain the benefit of section 19 (2) the debtor must establish that his case fell under one of the three clauses of section 16 of the Amending Act XXIII of 1948; that the three clauses are disjunctive each of them relating to a distinct category; that where a decree was passed on 27th February, 1946 and an appeal and a memorandum of cross-objections were filed and were pending in the High Court on the date of the coming into force of Act XXIII of 1948 and both were dismissed on 14th September, 1951, section 16 (iii) of the Amending Act would not apply but section 16 (ii) would apply and entitle the debtor to appy for relief under the Act even at the time when the appeal was heard; that the debtor's omission to so apply for relief at that stage would not preclude him from applying at a later stage on the principle of *res judicata*; that section 16(ii) which relates to suits and proceedings instituted before that Act came into force would apply when no decree or order had been passed and also when the decree or order had not become final on that date; and that the section does not prescribe as to when the relief is to be claimed, but having regard to the generality of section 19 (2) of the main Act it must be held that the Act expressly gave a right of amendment of the decree thereunder. *Ammalu Ammal* v. *Samalam Iyer*[5], states that though the general rule is that a mortgage decree is one and indivisible, exceptions thereto are admitted in special circumstances where the integrity of the mortgage has been disputed at the instance of the mortgagee himself; that having regard to the object of the Madras Agriculturists Relief Act to give relief to a specified class of debtors it trenches upon the general law and a mortgage decree can therefore be legally scaled down in favour of one of several judgment-debtors who is an agriculturist, while as regards others the decree is kept intact; that this principle is not confined to the case of a mortgage decree but

1. (1960) 2 M.L.J. 564.
2. (1960) 1 M.L.J. 326.
3. (1960) 2 M.L.J. 116.
4. (1960) 1 M.L.J. 1 (F.B.)
5. (1960) 2 M.L.J. 158.

equally applies to a mortgage debt which has not ripened into a decree ; and that an agriculturist mortgagor-debtor is entitled to redeem only his or her share of the mortgage or interest therein and cannot redeem the entire mortgage by paying the scaled down amount in view of the fact that the other executants of the mortgage are not agriculturists.

Hindu Law.

In *Meenakshi Achi* v. *Manickam Chettiar*[1], it is pointed out that a mortgage of joint family property by the father to discharge his antecedent debt not tainted with illegality or immorality will bind the interests of the sons in such property ; that an alienee making a *bona fide* enquiry as to the existence of the antecedent debt for the discharge of which the moneys were borrowed ostensibly by the father would be protected though there is no proof that the borrowed amount was actually utilised for the discharge of the entire debt ; that the rule as to enquiry is based on the inability of the lender or the alienee to control the disposition of the money once it leaves his hands ; and that the rule as to enquiry has found statutory recognition in section 38 of the Transfer of Property Act. *Kothanda Naidu* v. *Kuppayya Naidu*[2] states that where the sons challenge the debts incurred by the father as not binding on them on the ground of their being avyavaharika or immoral the burden is on them to prove the allegation by establishing a direct connection between the debts and the immoral purposes, and the burden will not be discharged by merely showing that the father lived an extravagant or immoral life. *Karuppa Goundan* v. *Periyaswami Goundan*[3] lays down that the *de facto* manager of the estate of an adult Hindu who is incapable of contracting due to unsoundness of mind cannot alienate his property even in case of necessity ; that such an alienation will be void and can confer no title on the alienee ; that a man who is born deaf and dumb has to be regarded as being in the same state as an idiot because being deaf and dumb and incapable of understanding he is lacking in all those senses which furnish the human mind with ideas ; and that he would therefore be a 'lunatic' within the scope of section 3 (5) of the Lunacy Act. *Thimmi Ammal* v. *Venkatarama Chetti*[4] decides that the right of a Hindu widow in the joint family property of which her husband was a coparcener devolving on her under section 3(3) of the Hindu Women's Rights to Property Act, 1937, is liable to be attached and sold in execution of a decree obtained against her even though the amplitude of the estate is limited. *State of Madras* v. *Ramanatha Rao*[5] points out that when the State claims by escheat the onus lies on it to show that the last proprietor died without heirs ; and that a mother's mother's sister's son of the last holder, despite the fact that the latter was an illegitimate offspring, will be eligible to succeed as a matru bandhu. In *Muthammal* v. *Subramaniaswami Devasthanam*[6], the Supreme Court makes it clear that under the Hindu Law, lunacy to operate as a bar for inheritance need not be congenital. *Sankaranarayana Aiyar* v. *Lakshmi Ammal*[7], holds that while it is true that the rate of maintenance determined by a prior decree in favour of a Hindu widow must prevail unless it is varied it does not necessarily imply that a Court has no power to vary that rate from a period anterior to the date of the suit brought for variation ; and that would depend entirely, upon the time from which the changed circumstances have prevailed, the reasonableness of the claim, of the maintenance-holder to an enhanced allowance, the existence or absence of demand and refusal and such factors. *Kuppanna Goundar* v. *Periyanna Goundar*[8], states that whether an arrangement, under which a portion of the property surrendered by a widow is given, at her instance, to a person who is not a stranger to the family, would be a device to divide the husband's estate between the reversioner and the widow's nominee cannot be decided on the basis of the relationship which the widow's nominee bears to the family of the reversioners, but upon whether the surrender is of the entire estate

1. (1960) 1 M.L.J. 89.
2. (1960) 1 M.L.J. 329.
3. (1960) 1 M.L.J. 360.
4. (1960) 2 M.L.J. 135.
5. (1960) 2 M.L.J. 55.
6. (1960) 2 M.L.J. (S.C.) 65.
7. (1960) 1 M.L.J. 215.
8. (1960) 1 M.L.J. 125.

or whether under the guise of surrender a portion of the property is diverted from the reversioners to a person who is not a reversioner involving an element of transfer, in which case, it could not be a valid surrender.

INCOME-TAX ACT.

In *Pierce, Leslie & Co., Ltd.* v. *Commissioner of Income-tax*[1], it is pointed out that it is not always easy to decide whether a particular payment received by a person is income or capital receipt; that where a company as part of its normal trading activities takes up certain managing agencies also which if terminated would entitle the assessee to receive a lump sum compensation, the receipt of such sum would be part of the income of the assessee and not a capital receipt, since the other business activities of the assessee company as its profit-making machinery as a whole were not affected by the termination of the managing agency agreement which was only one of the several activities of the assessee ; that where the whole trade of the assessee is built on such managing agency and the managing agency constituted the whole structure or framework of the assessee's profit-making apparatus, the receipt of a lump sum amount as compensation for the cancellation of the agreement of managing agency might constitute a capital receipt and not income ; but where the receipt of compensation for the cancellation of the managing agency is in the course of the normal trading activities of the assessee leaving the general framework of the assessee's business unimpaired, such compensation will be only part of the assessee's income. In *Godrej & Co.* v. *Commissioner of Income-tax*[2], however, the Supreme Court expresses the view that since a managing agency yielding a remuneration calculated at a rate of 20 per cent. of the profits is not the same thing as a managing agency yielding a remuneration calculated at 10 per cent of the profits provided under a subsequent agreement varying the original agreement, it amounts to a deterioration in the character and quality of the managing agency viewed as a profit-making apparatus, and that such deterioration is of an enduring kind ; that the reduced remuneration having been separately provided, the lump sum of Rs. 7½ lakhs paid by the managed company as compensation for releasing the company from the term as to 20 per cent. remuneration contained in the original agency agreement must be regarded as having been paid as compensation for injury to or deterioration of the managing agency ; that the sum was paid and received not to make up the difference between the higher and reduced remuneration but as a compensation for releasing the company from onerous terms ; and that so far as the managed company was concerned it was paid for securing immunity from the liability to pay higher remuneration to the managing agency, for the rest of the term of agency and it was a capital expenditure, and so far as the managing agency was concerned it was received as compensation for the deterioration or injury to the agency by reason of release of right to get higher remuneration and it was therefore a capital receipt not liable to tax. In the *Commissioner of Income-tax* v. *Vazir Sultan & Sons*[3], the Supreme Court states that whether compensation received for loss of agency business is capital or revenue receipt depends upon whether the agreement of agency in question constituted its profit-making apparatus and was in the nature of its fixed capital or was a trading asset or circulating capital or stock-in-trade of the business; that if it was the former the payment received would be a capital receipt, but if it was entered into by the assessee in the ordinary course of business and for the purpose of carrying on the business it would fall under the latter category and the compensation received would constitute a revenue receipt ; and it is immaterial whether the asset (agency) was of an enduring character or terminable at will. In the *Bihar State Co-operative Bank* v. *Commissioner of Income-tax*[4], the Supreme Court makes it clear that it is a normal mode of carrying on banking business to invest moneys in a manner that they are readily available ; that it is just as much a part of the

1. (1960) 2 M.L.J. 1.
2. (1960) 1 M.L.J. (S.C.) 55.
3. (1960) 2 M.L.J. (S.C.) 73.
4. (1960) 2 M.L.J. (S.C.) 54.

mode of conducting a bank's business as receiving deposits or lending moneys or discounting hundis or issuing demand drafts; that that is how the circulating capital is employed; that the moneys laid out in the form of deposits would not cease to be circulating capital and the returns flowing from them would form part of the profits of the business; and that as such interest is derived from the business of the bank it is income exempted under C.B.R. Notification No. 35 of 20th October, 1934 and No. 33 of 18th April, 1943. *Annamalai Chettiar* v. *Commissioner of Income-tax, Madras*[1] holds that to constitute a receipt of money in the taxable territories under section 4 (1) (*b*) (iii) of the Income-tax Act it should be remitted *in specie* or in any form known to the commercial world for the transmission of money from one country to another; that where the assessee purchased a car in Singapore and had a radio fitted into it and later on brought the car with the radio to India, the cost of the car and the radio purchased out of the foreign profits cannot represent money or money's worth brought over into the taxable territory and would not constitute 'remittance' of foreign profits within the meaning of section 4 (1) (*b*) (iii); and the fact that the assessee had the benefit of what he had purchased and brought into India is not a test at all in deciding whether there was a remittance; nor would the fact that the assessee had debited his head-quarters account with the cost of the car and the radio-set affect the position. *Associated Oil Mills* v. *Commissioner of Income-tax, Madras*[2] states that a mere prevention of a part of business cannot, for that reason alone, be held to be a destruction of the profit-earning apparatus of the assessee; that the mere fact that an intended business premises was requisitioned by Government cannot amount to sterilisation of a part of the business unless it be that but for the premises no business could be conducted; that the compensation awarded to the assessee in such circumstances cannot be a capital receipt but will form a revenue receipt; that though the receipts could be correlated to the ownership of the business which had to be transferred to another place, it could not for that reason be said to arise out of the conduct of the business; and that the receipt should be held to fall under section 6 (*v*), that is, income from other sources; and the receipt being of a casual and non-recurring nature would be exempt from tax under section 4 (4) (*vii*). *Chattanatha Karayalar* v. *Income-tax Officer, Nagercoil*[3] lays down that the effect of the *Explanation* added to section 5(7-A) by the Amending Act XXVI of 1956 is that once an order of transfer is made all the proceedings stand transferred; and the Income-tax Officer to whom the transfer is made would be in a position to continue not merely the pending proceedings but also to initiate further proceedings against the assessee in respect of any year, past or future; and that would include a power to re-open under section 34 the assessment for any earlier years which had been completed at the time the transfer was made. *Lakshmi Rajyam* v. *Commissioner of Income-tax, Madras*[4], points out that the question whether a payment made to an employee was by way of testimonial gift or by way of remuneration for past services would depend on whether the payment was altogether unconnected with the service rendered by the assessee, and though connected with it whether it was made merely out of admiration for personal qualities displayed in the course of the employment or was intended to confer a special benefit with respect to the services rendered so as to increase the earnings in the exercise of the profession; that it cannot be said that a payment made after the services had terminated could only be by way of testimonial gift; that the mere fact that the payment was made by a person other than the employer would not also be decisive of the question whether it was intended as a remuneration or as a present; that where the terms of the document are specific that the payment was made to the assessee as an employee by way of additional remuneration in respect of her employment as an actress in the film there could be no doubt that the income thereunder accrued to her by virtue of her having acted in the film; and the fact that the amount so paid was not allowed as a permissible deduction in the assessment of the donor cannot determine the character of the receipt in the hands of the assessee, and the receipt is assessable to tax. In

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1. (1960) 2 M.L.J. 558.
2. (1960) 2 M.L.J. 282.
3. (1960) 1 M.L.J. 439.
4. (1960) 2 M.L.J. 276.

Piyare Lal Adishwar Lal v. *Commissioner of Income-tax, Delhi*[1], the Supreme Court makes it clear that the emoluments received by the karta of a Hindu joint family as Treasurer of a bank are in the nature of salary and therefore assessable under section 7 and not under section 10 as profits and gains of business; and that the salary is the income of the individual and not the income of the joint family. In the *Commissioner of Income-tax, West Bengal* v. *Kalu Babu Lalchand*[2], the Supreme Court takes the view that where the promotion of a company and taking over a concern (of which the karta of a Hindu joint family was a partner) and the financing of it were all done with the help of joint family funds, and the karta did not contribute anything out of his personal funds, the managing director's remuneration received by the karta was as between him and the undivided family the income of the latter and should be so assessed in its hands. *Commissioner of Income-tax, Madras* v. *S. R. V. S. Ltd*,[3] states that the term 'installed' in relation to any machinery or plant means such installation as that machinery or plant is capable of; that it does not necessarily connote some thing fixed to the earth or immovable; that a bus or lorry purchased by an assessee and put on road in the course of the business which he carried on will certainly satisfy the test of installation of such vehicles which are also 'plant' within the meaning of section 10 (5); that the expression 'plant or machinery installed' should be given the same meaning in both sub-clauses (*a*) and (*b*) of section 10 (2) (vi); and that an assessee will be entitled to claim development rebate in respect of such vehicles. *Mir Mohamed Ali* v. *Commissioner of Income-tax, Madras*[4] holds that in the absence of a statutory definition the normal meaning of the word 'machinery' should be given to that expression in section 10 (2) (vi) and section 10 (2) (vi) (*a*); that a diesel engine fitted to a motor vehicle is 'machinery' within the meaning of the section; that 'machinery' does not cease to be so merely because it has to be used in conjunction with one or more machines or merely because it is installed as part of a manufacturing or industrial plant; and hence an assessee, a bus owner, is entitled to claim depreciation both under section 10 (2) (vi) and section 10 (2) (vi) (*a*) in cases where he has fitted diesel engines to his motor vehicles in replacement of the existing engines; the fact that the diesel engines were part of the motor vehicles is not relevant in deciding the claim for depreciation allowance; and the diesel engines being 'machinery' the assessee will be entitled to claim the statutory allowance for depreciation. *Francis Vallabarayar* v. *Commissioner of Income-tax*[5], decides that though clauses (*a*) and (*b*) of section 10(5) define the written-down value with reference to the actual cost to the assessee and section 10 (5) (*c*) introduced by the Amending Act, 1953, provided a further definition for arriving at the written-down value of assets acquired by an assessee by way of gift or inheritance, even prior to the introduction of the latter clause an assessee would be entitled to depreciation allowance under section 10 (5) even with reference to property acquired by him by inheritance from his father; that the original cost thereof to the assessee in such cases would be the real value of the property at the time the assessee acquired it; that the amendment made in 1953 only gives statutory recognition to the principle which should govern the statutory expression 'actual cost to the assessee' in clauses (*a*) and (*b*) of section 10 (5); and that the limitation introduced by clause (*c*) as to cases where the market value in the hands of the assessee differs from the written-down value in the hands of the previous owner would not apply to assessment cases earlier to 1953. In *Commissioner of Income-tax, Bombay* v. *Chandulal Keshavlal & Co*[6], the Supreme Court expresses the view that it is a question of fact in each case whether an amount claimed as 'deductible allowance' under section 10 (2) was 'laid out wholly and exclusively for the purpose of business'; that in deciding whether a payment of money is deductible expenditure, one has to take into consideration questions of commercial expediency and principles of ordinary trading; that if the expense is incurred for fostering the business of another only or was made by way of distribution of profits or for some improper

1. (1960) 2 M.L.J. (S.C.) 111.
2. (1960) 1 M.L.J. (S.C.) 81.
3. (1960) 1 M.L.J. 325.
4. (1960) 1 M.L.J. 460.
5. (1960) 2 M.L.J. 241.
6. (1960) 2 M.L.J. (S.C.) 101.

and oblique purpose outside the scope of the business of the assessee then the expense is not deductible : that if the expenditure is incurred for the trade of the assessee or as part of the assessee's legitimate commercial undertaking in order to facilitate his carrying on of business it is immaterial if a third party benefits thereby ; and the decision of such questions is for the Appellate Tribunal, and the decision must be sustained if there is evidence on which the Tribunal could have come to such a conclusion. *T. V. S. & Sons* v. *Commissioner of Income-tax, Madras*[1], points out that in order to attract section 12-B it is sufficient if the profits, capital gains arose during the accounting year and they need not have been actually received ; that the liability to tax is on the profits which have arisen to an assessee by the sale of his capital asset ; that if it subsequently happens that the profit is not actually received that would be a capital loss arising in the year when the money became irrecoverable ; and that to attract the tax under secion 12-B it is sufficient if the assessee has a right to receive the profits and it is not necessary that it should have been actually received. *Abdul Khadir* v. *Commissioner of Income-tax, Madras*[2] expresses the view that if there are unexplained cash credits in the accounts produced by the assessee that by itself would certainly be a relevant factor to justify a rejection of the book results; that once the Department and the Tribunal find that the credit entries in the names of the relatives of the assessee are not really loans but fictitious entries to cover up income from undiclosed sources, in view of the poor circumstances in which the family had started and the fact that those relations had no such large sums of money which they could have advanced to the assessee, there is ample justification for the rejection of the book results and for the application of the Proviso to section 13. *Commissioner of Income-tax, Madras* v. *Ramnarayan Chellaram*[3] points out that it is clear from section 15-A that the earned income relief does not enter into the computation of the total world income ; that under section 17 (1) neither the computation of the total world income nor the computation of the assessee comes into play ; that there is no scope for reducing the total world income by the earned income relief for the purpose of ascertaining the world income ; and hence the earned income relief is not reducible from the total world income of the non-resident assessee for the purpose of calculating the average rate of tax. *Vedachala Mudaliar* v. *Rangaraju Naidu*[4], takes the view that the basic principle underlying section 28 (1) is that a penalty can be levied under the section only on a person in existence on the date the penalty is levied by the competent authority ; that the order levying a penalty might be an order passed without jurisdiction, and so long as the order was not set aside in appropriate proceedings it would be lawful for the income-tax authorities to enforce that order and collect the amount ; that in a case where action is taken under section 28 (1) against a firm consisting of two partners the notice required by section 28 (3) may be served on any partner ; and the fact that the order levying the penalty was passed without jurisdiction and no notice was served on the other partner does not by itself disentitle the partner suing to the relief of contribution. *Seethai Achi* v. *Income-tax Officer*[5] holds that since section 23-A is only a procedural section not concerned with any assessment or reassessment if an order under the section is passed the question of the assessment of the shareholder will have to be taken up ; that the Department will have no right independent of section 34 to reassess the assessee under the terms of section 23-A itself; that the service of a notice is a condition precedent to the assumption of jurisdiction under section 34 ; that the period of limitation of 4 years under section 34 (1) is to be computed only with reference to the assessment year of the assessee or shareholder ; and the date on which an order under section 23-A was passed against the company would not be relevant in computing the period of limitation either for the assessment or for the reassessment of the share-holder ; and that where the notice was served upon the assessee after the period of limitation the Income-tax Department would have no power to re-open the assessment or to re-assess the assessee

1. (1960) 1 M.L.J. 58.
2. (1960) 2 M.L.J. 161.
3. (1960) 2 M.L.J. 560.
4. (1960) 1 M.L.J. 445.
5. (1960) 2 M.L.J. 259.

even though there was a valid order under section 23-A. *Ramaswami Iyengar* v. *Commissioner of Income-tax, Madras*[1] points out that under section 33 there would be a right of appeal against an order of the Assistant Appellate Commissioner both to the assessee and the Deparment; that the jurisdiction of the Appellate Tribunal should be governed by the subject-matter of the appeal; that since section 33 (4) unlike section 33(3) does not vest power in the Appellate Tribunal to enhance the tax except when there is an appeal by the Department, the Tribunal would have no jurisdiction to pass an order so as to permit a ground to be raised by the respondent department which if allowed would make the position of the appellant worse than what it was before; that though a power to remand is not expressly given by section 33(4) such power is implicit; and that reading section 33 (1) with the relevant rules it is clear that the power of remand conferred by rule 28 is only incidental to the power to hear and dispose of the appeal, and the power of remand cannot be exercised for the purpose of enhancing the tax. *S. P. K. K. Khader Mohideen* v. *Commissioner of Income-tax, Madras*[2] makes it clear that section 44-D is designed to prevent avoidance of income-tax by persons who were liable to tax in respect of income-producing assets by adopting the device of transferring them to persons outside the taxable territories retaining in themselves the power of enjoyment of the income; that in such a case even if the income is received by a person who is not taxable by reason of his not being a resident, it is deemed to be income received by the transferor and rendered liable to tax; that if the assets transferred constituted the entire capital of the foreign company it would follow that the entire profits of the company and not merely the dividends which the company chose to declare should be held to be the income of the assessee; that the section will not however apply if the transfer of assets was not for the purpose of avoiding tax-liability or if it was a *bona fide* commercial transaction not designed for the purpose of avoiding liability; that the burden of proof lies on the assessee, and that where there is no such proof two conditions must be satisfied, namely, that the transfer of assets is by a resident in India to a person not so resident or not ordinarily resident in India in such a way that the income in respect of those assets becomes payable to the latter, and that notwithstanding the transfer the transferor has power to enjoy at present or in future the income received by the transferee in the foreign country. *Union of India* v. *Arunachalam*[3], expresses the view that in realising the arrears of income-tax as arrears of land revenue by virtue of the provisions of section 46, the Collector is not constituted into a civil or revenue Court, and his adjudication on a claim petition in respect of the property attached for recovery of the arrears of income-tax will not be tantamount to a decision by a civil or revenue Court within the meaning of section 41 (1) of the Madras Court-fees and Suits Valuation Act.

COURT-FEES ACT.

In *Union of India* v. *Arunachalam*[3], it is pointed out that under section 3 (ii) of the Madras Court-fees and Suits Valuation Act there are four classes of Courts, civil, revenue, criminal, and any authority or Tribunal having jurisdiction under any special or local law to decide questions affecting the rights of parties; that a Collector acting under section 46 of the Income-tax Act may be a Court but will not constitute a civil Court for purposes of section 41 (1) of the Court-fees Act; nor could the Collector be deemed to be a civil Court even though he exercises the powers of one for certain purposes in proceedings under the said section; and that in suits for the setting aside of an adjudication by the Collector on a claim petition in respect of properties attached to recover arrears of income-tax section 50 of the Court Fees Act alone could apply for purpose of Court-fees payable. *Janaki Ammal* v. *Rangachari*[4] makes it clear that ordinarily there are three stages at which a Court can enquire into the question whether a plaint or appeal has been properly valued, namely, (*a*) before its registration, in which case, the Court can review, correct, and further review its decision in the manner specified in section 12 (1) of the Court-fees Act; (*b*) after registration of the suit or appeal, when the question of Court-fee is raised by the

1. (1960) 2 M.L.J. 516.
2. (1960) 1 M.L.J. 152.
3. (1960) 1 M.L.J. 137.
4. (1960) 2 M.L.J. 527.

defendant or respondent and the Court has to decide the matter, in which case, the decision rendered by the Court will be binding on it unless a fresh decision is asked for by the Court-fee Examiner; (*c*) on the objection of the Court-fee Examiner under section 18, in which case, when once a decision is given there can be no further consideration or review except by an appellate Court under section 12 (4) ; that a decision given under section 18 (2) will be final so far as that Court is concerned ; and that in the absence of an express statutory provision enabling the Court to review its decision, a decision on a question of Court-fee once given will be binding on the Court which gave the decision at all subsequent stages. *Parameswaran* v. *Sarveswaran*[1] lays down that though it is true that a Court is not bound by the valuation of the relief given by the plaintiff, its power to go behind it is also limited to ascertaining the real value on the basis of the plaint allegations assuming them to be true for the purpose; that the power is limited only to ascertain the plaintiff's estimate and not to substitute its own estimate ; that if the plaintiff's estimate is *ex facie* sham or obviously wrong the Court can ask the plaintiff to make a proper estimate ; that mere inaccuracy in the estimate will not make it sham ; and that reality and not accuracy is the test for ascertaining a proper valuation under section 36 (1). *Qamrunnissa Begum* v. *Fatima Begum*[2] lays down that where a plaintiff, a Mahomedan co-sharer, claims partition and possession of his share in the estate of a deceased on the footing that though several items of properties were standing in the names of other co-sharers they really belong to the estate of the deceased he could value the relief under section 37 (*a*); that so long as there is no allegation in the plaint that any of the co-sharers was claiming any of the items adversely to the others, the plaintiff should be deemed to be in joint possession of the same ; and that where the plaintiff claims moneys standing in the names of the defendants on the allegation that they were put in their names nominally and they were really for the benefit of the family, the suit would fall under section 37(ii) and the plaintiff need not pay Court-fee on the value of his share. *Firm of Chakravarthi Iyengar* v. *Collector of Madras*[3] states that since the Madras Court Fees and Suits Valuation Act provides for payment of Court-fee not only in regard to suits but also in regard to matters before other Tribunals or Officers who may be either revenue or administrative officers the term 'proceeding' referred to in section 87 (2) will comprehend all matters other than suits ; that the term should be held to be used as meaning a proceeding in the nature of a suit; that the Collector or Land Acquisition Officer acting under section 11 of the Land Acquisition Act is deciding the rights of parties, and such proceedings will fall under section 87 (2) ; that a reference under section 18 of the Land Acquisition Act is only a continuation of or at any rate arises out of the initial proceeding under section 11 ; and so, appeals filed in the High Court arising out of such proceedings started before the coming into force of the Court-fees Act of 1955 will be governed by the old Court-fees Act by virtue of section 87 (2) of the new Act. *Coonoor Mosque* v. *Abdul Hamid Sahib*[4], holds that an application under section 7 (2) of the Madras Buildings (Lease and Rent Control) Act, 1949, for eviction of a tenant made before a Subordinate Judge as Rent Controller is liable to be affixed with a Court-fee stamp of Rupee One under Article 10 (*k*) (i) of Schedule II to the Madras Court-fees and Suits Valuation Act, and that the Court-fee is not determinable with reference to the office which the officer who has been appointed as Rent Controller holds ; nor could the Rent Controller be considered to be a Court for purposes of Court-fee.

LAW OF EVIDENCE.

In *Govindarajulu* v. *Lakshmi Ammal*[5], it is pointed out that there is nothing in the Evidence Act which makes a doctor's certificate as to the illness of a person by itself evidence at all ; that in order to rely on it as evidence it should be proved in the normal way by the testimony of the person giving it ; that the statement of a doctor or report is not evidence unless he is called as a witness ; and the fact that such medical certificate or report was called for by the Court itself does not make any difference to the principle. *Vazir Begum Ammal* v *Sait Tholaram*[6] states.

1. (1960) 1 M.L.J. 468.
2. (1960) 1 M.L.J. 354.
3. (1960) 2 M.L.J. 207.
4. (1960) 1 M.L.J. 135.
5. (1960) 2 M.L.J. 274.
6. (1960) 1 M.L.J. 142.

that where in a suit on a pro-note executed by a pardanashin lady the evidence is that the pro-note was taken by the lady's husband inside the house and was brought back after obtaining the signature, and the husband stated that the signature on the note was his wife's, the statement so made is admissible in evidence to prove the signature of the lady on the pro-note under the exception enacted to section 6 of the Evidence Act. *Naina Mohamed, In re*[1], makes it clear that the ordinary rule which applies to criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in section 106; that even where there are facts specially within the knowledge of an accused person which could throw light upon his guilt or innocence as the case may be the accused is not bound to allege or prove the same; but in a criminal trial where the guilt of the accused is to be established by circumstantial evidence and the accused does not throw any light at all upon facts which ought to be specially within his knowledge and which could support any theory or hypothesis compatible with his innocence, the Court can take into consideration his failure to adduce any explanation in finding him guilty. *Shankerlal* v. *Collecor of Central Excise*[2] points out that section 132 will apply only to judicial proceedings in or before any Court, and that proceedings before the Sea Customs Officers are not judicial proceedings and such officers do not constitute Courts and therefore the section will have no application to such cases:

Limitation Act.

In *Veeraswamy Reddy* v *Kanakammal*[3], it is made clear that the proper way of reading sections 9 and 13 of the Limitation Act for purposes of ascertaining whether a suit is in time or not is to first compute the interval between the date when the cause of action arose and the date when the suit was instituted, and then, to deduct from that the time during which the defendant had been absent from India; and if the resultant period does not exceed the time specified in column 3 of Schedule I the suit would be in time. *Karuppan Chettiar* v *State of Madras*[4], holds that section 29 (2) will have the effect of applying the various sections referred to therein to proceedings under section 7 (1) of the Madras Estates (Supplementary) Act, 1956, which are in effect in the nature of an application, and hence would attract section 14 (1) of the Limitation Act to such proceedings, with the result that where a party was prosecuting *bona fide* a writ application against the order of the Tribunal the time taken therein could be excluded in computing the limitation under section 7 (1) of the Madras Estates (Supplementary) Act. *Pena Parayan Ambalam* v. *Venkatachalam Chettiar*[5] states that an acknowledgment in a sale proclamation about the subsisting character of a mortgage, by the decree-holder, who becomes ultimately the auction-purchaser of the property for a low value on the ground that it was being bought subject to the subsisting mortgage would operate to save limitation in so far as that mortgage is concerned; but section 17 of the Limitation Act can be invoked only by the actual person disabled and not by his assignee. *Abdul Ghani* v. *Periyaswami Chetti*[6], takes the view that under section 21 (2) the theory of implied agency underlying the concept of partnership is not by itself sufficient to enable a partner to bind the other partners by an acknowledgment of the liability of the firm unless there is evidence however slight, or other circumstances such as a course of business or conduct of parties as to make the non-acknowledging partner also liable. In *Savalram Pujari* v. *Dnyaneshwar*[7], the Supreme Court points out that section 23 refers not to a continuing right but to a continuing wrong; that if a wrongful act causes an injury which is complete there is no continuing wrong even if the resulting damage may continue; and that where the wrongful act complained of amounts to ouster the resulting injury to the right is complete at the date of that ouster and there is no scope for the application of section 23 to such a case. *Ganapathi Pandaram* v. *Collector of Coimbatore*[8] makes it clear that the essential condition for the application of section 28 is the right of an aggrieved person to institute a suit for the possession of the property concerned, and

1. (1960) 1 M.L.J. 118.
2. (1960) 1 M.L.J. 367.
3. (1960) 2 M.L.J. 379.
4. (1960) 2 M.L.J. 511.
5. (1960) 1 M.L.J. 346.
6. (1960) 2 M.L.J. 43.
7. (1960) 2 M.L.J. (S.C.) 87.
8. (1960) 1 M.L.J. 247.

if the right of such person is either expressly or by necessary implication barred by statute section 28 cannot be invoked and there can be no extinguishment of the title of such person to the property concerned. *State Electricity Board* v. *Govindarajulu*[1] holds that a suit by the State Electricity Board to recover from the defendant a sum of money, being the cost of a pole belonging to it broken by the defendant's vehicle and the loss of revenue on account of the interruption of electric supply to consumers, is governed by Article 36 and not by Article 149. *Balagurumurthi Chettiar* v. *Ranganayaki Ammal*[2] decides that where there was a deposit and an agreement that it was repayable on demand Article 60 will apply. *Kesava Chettiar* v. *Ramanatha Mudaliar*[3] points out that when the course of dealings between the parties amounts to a mutual, open and current account involving reciprocal demands between the parties, Article 85 will be attracted ; that for an account being mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side only, those on the other being merely complete or partial discharge of such obligation ; that it is not necessary for the purpose that the dealings must refer either to different businesses or to different subject-matters or that actual reciprocal demands should have been made ; that the presence of a shifting balance in an account is one of the tests of its mutuality ; that what the Court has to see is not whether the balance actually shifts but whether the nature of the transactions is such that it was capable of giving rise to shifting balances ; and that in order to decide whether a particular account is mutual or not it is the essence of the transaction that has to be looked into, and the number of dealings do not count. In *Savalram Pujari* v. *Dnyaneshwar*[4], the Supreme Court holds that Article 124 applies to suits for possession of hereditary offices, and the period is 12 years, and it runs from the time the defendant takes possession of the office 'adversely' to the plaintiff; that unlike Article 142 where the plaintiff could be defeated by his not being in possession for 12 years, under Article 124, he can be defeated only by the adverse possession of the defendant for the prescribed period of 12 years ; that where the worshippers who were performing the services in the place of the plaintiff were not parties and the defendants were the trustees who were not holding the offices in question themselves, Article 124 cannot apply and Article 120 will apply ; and that the act of the trustees in denying the rights claimed by the plaintiff as hereditary worshippers and claiming and obtaining possession by a suit in 1922 was not a continuing wrong and will not provide scope for the application of section 23. *Natesa Nattar* v. *J. D. Daniel*[5] states that under Article 142, in a suit for ejectment, the plaintiff cannot rest his claim on title alone but must also show that he has exercised rights of ownership by being in possession within 12 years of suit. *Mrs. N. Wapshare* v. *Pierce, Leslie & Co*[6], expresses the view that while Article 144 no doubt applies to a suit by an owner seeking to recover a possessory interest against the person who has no answer to that claim unless it is the answer of adverse possession, such claim must of course be tried on the merits. *State Electricity Board* v. *Govindarajulu*[7], holds that Article 149 applies only to a suit by or on behalf of the Central or State Government and cannot be availed of by the grantee from the Government or a statutory body created by the Government to take over certain functions of the Government like the Madras State Electricity Board ; and the fact that the Government may have power to make rules and other controlling power over the body would not make it a part or limb of the Government for purposes of Article 149. *Ramaswami Chettiar* v. *Official Receiver*[8] decides that an application for execution made by the transferee of a decree in fraud of creditors prior to the annulment of the transfer which being legal when made, will not be rendered illegal by reason of the transfer becoming void on annulment from the date of transfer, satisfies the requirements of Article 182 (5) and gives a fresh starting point of limitation.

(*to be continued*).

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1. (1960) 2 M.L.J. 245.
2. (1960) 2 M.L.J. 48.
3. (1960) 1 M.L.J. 452.
4. (1960) 2 M.L.J. (S.C.) 87.
5. (1960) 1 M.L.J. 488.
6. (1960) 2 M.L.J. 401.
7. (1960) 2 M.L.J. 245.
8. (1960) 1 M.L.J. (S.C.) 41.

CIVIL PROCEDURE CODE.

In *Ranganathan Chettiar*, In re[1].—It is suggested that where in one of two suits between the same parties a decree is made with a condition that if the plaintiff in the other suit succeeded the decree passed already will become a joint decree in favour of the plaintiff in the other suit; and by a separate clause in the decree the interest of the plaintiff in the other suit is safeguarded by directing that the decree now passed will not be executed till the disposal of the other suit, the direction amounts to a 'decree' as defined in section 2 (2) of the Civil Procedure Code and is not a mere order postponing execution. *Ganapathi Gounder* v. *State of Madras*[2], points out that there can be no *res judicata* regarding a cause of action that has arisen subsequent to the previous proceeding; that the bar arises only where the issue has been directly and substantially raised in a former suit or proceeding; and that where there was no cause of action no matter of the litigation can be said to be directly and substantially in issue in the former suit or proceeding. *Mohanram* v. *Sundararamier*[3], states that the doctrine of *res judicata* results from a decision of the Court, that it is based on public policy and ousts the jurisdiction of the Court and presumes conclusively the truth of the former decision; and that the principle of *res judicata* cannot prevail to the extent of compelling the executing Court to sell inalienable service inam lands prohibited on grounds of public policy either by statute or under the general law. *Collector of Tiruchirapalli* v. *Velan Chettiar*[4], holds that in a suit under section 92 where there has been no diversion of funds as to be termed a misappropriation or malversation of the trust funds or even a breach of trust, the persons in management of the trust properties should not be asked to account for the period of their management and a mere spending for other religious or charitable purposes cannot always amount to a diversion of trust funds. *Kanihammal* v. *Rajalakshmi*[5], points out that section 95 (1) provides *inter alia* for two classes of cases in which compensation may be ordered to be paid to a defendant where an attachment has been effected at the instance of the plaintiff, namely, where the attachment has been applied for on insufficient grounds, or where the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the suit. In *Khalilul Rahman Sahib* v. *Syed Hussain*[6], it is held that though the setting aside of an attachment alleged to have been obtained on insufficient grounds is not an essential preliminary to the grant of compensation; yet when an order of attachment so obtained has been made absolute after hearing the parties it would mean that according to the Court the application for attachment was made on sufficient grounds; and it will not be open to the Court on a subsequent application under section 95 to hold the contrary; that so long as the prior order of attachment is not set aside either by appeal or otherwise an application under section 95 cannot be allowed on the ground that the order had been obtained on insufficient grounds; that it is really a case of applying the principle of *res judicata* which may not however in terms apply; and that where the attachment order has been confirmed only *ex parte* and there is no final order on the merits after considering the objections of the defendant it will not be equitable to apply the above rule. *Lakshmi Ammal* v. *Ramachandra Reddiar*[7], holds that the jurisdiction of the High Court under section 100 does not extend to interference with a finding of fact merely on the ground that a different inference is possible on the evidence recorded from that drawn by the Courts below. *Kalimuthu Servai* v. *Govindaswami Servai*[8], takes the view that the true principle in all cases of granting leave to sue *in forma pauperis* is that it is primarily for the State to challenge the correctness of such orders and hence the High Court will not normally interfere in revision against such orders at the instance of the parties to the dispute. *Marcalline Fernando* v. *Francis Xavier Church*[9], makes it clear that the examination of a witness on commission is not an alternative to an examination in Court since one of the fundamental rules of procedure in a judicial trial is that the Judge should himself hear the evidence; that unless the conditions laid down in section 133 or Order 26, rule 1 are satisfied a Court will have no jurisdiction to

1. (1960) 1 M.L.J. 330.
2. (1960) 1 M.L.J. 322.
3. (1960) 2 M.L.J. 30.
4. (1960) 1 M.L.J. 364.
5. (1960) 2 M.L.J. 484.
6. (1960) 2 M.L.J. 479.
7. (1960) 2 M.L.J. 252.
8. (1960) 2 M.L.J. 313.
9. (1960) 2 M.L.J. 349.

delegate the examination of witnesses to a commission on the supposed theory that evidence in Court is necessary only in cases where the witness is likely to speak an untruth elsewhere; and the mere fact that by reason of his culture and background as a priest a person could be expected to speak only the truth would not by itself be a sufficient ground to entitle him to examination on commission. *Janaki Ammal* v. *Krishnaswami Mudaliar*[1], states that a security bond executed in favour of an officer of Court in the form mentioned in Form 3 of Appendix G of the Schedule to the Code of Civil Procedure is not executed in favour of a particular person either by designation or by name and is not assignable; and even if such a case does not fall within section 145 the Court has ample jurisdiction in its inherent powers to enforce such a bond by way of execution in the same proceedings to realise the money; and there is no need to bring a separate suit to enforce the bond. *Venkataraman* v. *Lakshmi Ammal*[2], decides that section 151 could confer no power on a Court to vary a consent decree under which a limited estate was given before the coming into force of the Hindu Succession Act, 1956, into a decree granting her absolute right; and the section, though wide, cannot grant power to any Court to grant such a substantive declaration. *Foolchand* v. *Union of India*[3], points out that Order 1, rule 3, permits joinder of several defendants against whom any right to relief in respect of or arising out of the same act or transaction is alleged to exist whether jointly, severally, or in the alternative, when if separate suits are brought against such persons any common question of law or fact would arise; and that the words used being 'same act or transaction' and not 'same cause of action' the provisions of Order 1, rule 3 are wider than the corresponding provisions of section 80, Civil Procedure Code of 1882. *Venugopal* v. *Triplicane Urban Co-operative Society*[4], states that where a Court passes an order under Order 9, rule 8, directing the restoration of a suit dismissed for default on condition of payment of costs to the opposite party before a specified date, and provides that in default of such payment the application will stand dismissed, the Court no longer remains seised of the application but becomes *functus officio*. *Meenakshisundaram* v. *Radhakrishna Pillai*[5], holds that Order 11, rule 1, would no doubt apply to Election Tribunals and the Tribunal would have power to issue interrogatories; that before doing so, it should see the effect, import and significance of the interrogatories sought to be administered; that if any objection is raised by the party to whom they are sought to be administered on the ground that they are likely to incriminate him in any criminal offence it is the duty of the Tribunal to examine the objection, because a party is not bound to answer such interrogatories; and that where the Tribunal does not so apply its mind the High Court will interfere in revision and set aside the order. *Bhagyalakshmi* v. *Srinivasa Reddiar*[6], makes it clear that in cases where the right to discovery in any form depends upon the determination of any question or issue in dispute in the cause or matter or it is desirable that some issue or question of law or fact or mixed question of law and fact in dispute should be determined first, the question of discovery should be deferred till after the issue or question has been determined; that the mere fact that certain documents have been produced and filed in a suit by a party does not by itself give the other side the right to inspect the same as a matter of course when the party producing the same objects to its being inspected before the determination of a particular issue or question; and that the documents are relevant for purposes of the suit is not by itself a sufficient reason for ordering premature inspection. *Alsidass Kaverlal* v. *Hiriya Gowder*[7], lays down that where an order of attachment of amounts payable by a garnishee to the judgment-debtor is applied for under Order 21, rule 46, the Court will not be justified in accepting the uncorroborated statement of the garnishee as to the state of account but should enquire and come to an independent conclusion; that where a debt is being attached it is not necessary that the exact amount of the debt should be stated provided there is a debt actually due at the time of the attachment; and the prohibitory order issued by the Court will operate to bar the payment to the judgment-debtor by the garnishee of all amounts

1. (1960) 1 M.L.J. 148.
2. (1960) 2 M.L.J. 157.
3. (1960) 2 M.L.J. 243.
4. (1960) 2 M.L.J. 136.
5. (1960) 1 M.L.J. 401.
6. (1960) 1 M.L.J. 292.
7. (1960) 2 M.L.J. 561.

payable up to the date of the attachment. In *Jiban Krishna Mukherjee* v. *New Beerbhum Coal Co. Ltd.*[1], the Supreme Court lays down that Order 21, rule 89, does not apply to a sale held by a receiver appointed by the Court in execution of a decree and authorised to sell the property. *Venkatesh Kotadia* v. *Shantha Bai*[2], states that having regard to the fact that the vesting of the property sold in execution of a decree is on the date of the sale under Order 21, rule 94, though such vesting becomes effective only when the sale is confirmed and the continued subsistence of the decree is not a condition precedent to the issue of a sale certificate, confirmation of the sale under Order 21, rule 92, is no longer conditional upon the existence on the date of confirmation of an outstanding decree in execution of which the sale had taken place; that Order 21, rule 92, is imperative and the Court is bound to confirm a sale unless it is set aside under Order 21, rules 89 to 91, though cases of fraud, restitution, etc., may stand on a different footing, and different considerations may apply in particular circumstances where the decree-holder is himself the purchaser; and hence, an execution sale in favour of a stranger auction purchaser has to be confirmed under Order 21 rule 92 notwithstanding the fact that the decree in execution of which the sale took place, had, before its confirmation, been modified on appeal with the result that on the date of the sale the decree remained overpaid and nothing was due under it. *Kannappa Chettiar* v. *Srinivasan Chettiar*[3], expresses the view that rules 89 to 92 of Order 21 proceed on the basis that the purchase money is deposited in Court and where that is not done the basis of the rules goes and there can be no confirmation under rule 92 ; and that where the decree-holder under Order 21, rule 72, bid and purchased the property of the judgment-debtor setting off the purchase money against the amount due under the decree pending the appeal, and the decree was modified in appeal, and the amount due as scaled down under Madras Act IV of 1938 was much below the purchase money, but the Court confirmed the sale in ignorance of the facts and recorded part-satisfaction, the Court can under section 151 declare that the order of confirmation of the sale was illegal. *Santha* v. *Natarajan Pillai*[4], points out that in an application under Order 22, rule 3, the only question for consideration is whether the petitioners are the legal representatives of the deceased and the Court is not interested in adjudicating, at that stage, what exactly was the extent of the interest possessed by the deceased plaintiff and whether the suit as laid by the deceased was sustainable against the defendants ; and that universal legatees under a will executed by the deceased, the genuineness of which is not disputed, are legal representatives entitled to be brought on record in the place of the deceased. *Ranganayaki* v. *Bapu Iyer*[5], holds that Order 24, rule 3, will apply only when the decree-holder is in a position to take out the money deposited by the judgment-debtor in Court and is not prevented from doing so by any order passed by the Court on the invitation of the judgment-debtor ; and that where the judgment-debtor in the appeal filed against the decree had applied for stay of execution and had been directed by the appellate Court to deposit the decree amount in Court with liberty to the decree-holder to withdraw the amount on furnishing security, but the decree-holder was unable to draw out the whole amount till the appellate Court confirmed the decree the decree-holder was undoubtedly entitled to interest, and to such a situation Order 24, rule 3, will not apply. *Kandaswami Naicker* v. *Raju Naicker*[6] decides that once the plaintiff is not allowed to continue the suit *in forma pauperis* and he had not paid the requisite Court-fee, the suit must be deemed to be not on the file ; and if the plaintiff did not choose to pay the deficit Court-fee what the Court can do is to return the papers to him ; and in such circumstances, the provisions of Order 33, rule 11, will have no application ; and the plaintiff could not be directed to pay any further Court fee under that provision. *Kalimuthu Servai* v. *Govindaswami Servai*[7], states that the true principle in all cases of granting leave to sue *in forma puperis* is that it is for the State to challenge the correctness of such orders, and hence the High Court will not normally interfere in revision against such orders.

1. (1960) 1 M.L.J. (S.C.). 96.
2. (1960) 2 M.L.J. 346.
3. (1960) 2 M.L.J. 93.
4. (1960) 1 M.L.J. 318.
5. (1960) 2 M.L.J. 270.
6. (1960) 1 M.L.J. 481.
7. (1960) 2 M.L.J. 313.

at the instance; of the parties to the dispute. *Ahamed Rowther* v. *Bathumal Beevi*[1], states that rules 23 and 25 of Order 41 do not enable an appellate Court to remand a suit for retrial merely on the ground that reception of additional evidence is necessary, for rule 23 refers to remand on a decree being reversed on appeal and such decree was based on a preliminary, point, and rule 25 provides for an appellate Court directing the trial Court to take additional evidence required and to return the evidence to the appellate Court together with its findings if necessary. *Viswanatha Pillai* v. *Indian Overseas Bank*[2], holds that it will be open to the High Court to grant a stay of all dependent proceedings while it is in seisin of the appeal against the order refusing to set aside an *ex parte* decree, and in an appeal against an order refusing to set aside an *ex parte* decree it is open to the appellate Court to stay the execution of the *ex parte* decree itself even though no appeal has been filed against the said decree. *Chockalingam Chettiar* v. *Chidambaram Pillai*[3], states that while it is true that the expression 'for any other sufficient cause' in Order 47, rule 1, should be construed *ejusdem generis* with the other provisions of the rule laying down the limits of the exercise of the power of review, a too narrow interpretation of the words will not be in accord with equitable principles.

INDIAN PENAL CODE.

In *Kamaraj Goundar*, In re[4], it is pointed out that section 34 of the Penal Code requires that there must be a general intention shared by all the persons concerned in the offence; and therefore, the foundation of the constructive liability is the common intention animating the accused in the doing of the criminal act and the doing of such act in furtherance of the common intention. *Parvathi Ammal*, In re[5], holds that where a woman murders her children and attempts to commit suicide by drowning owing to proverty, ill-health and mental depression and the evidence showed that she was suffering from periodical fits of depression and mental confusion, but there was nothing to show that at the time of committing the offences the accused was by reason of unsoundness of mind incapable of knowing the nature of her acts or that those acts were wrong or contrary to law, section 84 cannot be availed of and the accused has to be convicted under sections 302 and 309. In *Vishwanath* v. *State of Uttar Pradesh*[6], the Supreme Court expresses the view that when the accused's sister was being abducted, though by her husband, and there was an assault upon her and she was compelled by force to go away from her father's place, the accused will have the right of private defence of the body of his sister against an assault with the intention of abducting her by force; that such right will extend to the causing of death; that the giving of only one blow with an ordinary knife, which if it had been a little this way or that could not have been fatal, cannot be said to be causing of more harm than was necessary for the purpose of defence. *Krishnamurthy*, In re,[7] states that in a prosecution for an offence under section 161 it is necessary to prove all the ingredients of the offence as set out in the section; that mere receipt of money by a public servant in order to get a job for another person somewhere would not by itself necessarily be an offence under section 161; and that the rendering or attempting to render any service with any public servant should be referred to in the charge and established before the accused could be convicted of an offence under that section. In *Mahomed Dastagir* v. *State of Madras*[8], the Supreme Court expresses the view that a sentence of six months rigorous imprisonment and fine of Rs. 1000 could not be said to be severe in a case where there had been an attempt to corrupt a responsible public servant. *Public Prosecutor* v. *Semalai Pannadi*[9] decides that where the deceased was committing mischief within the meaning of section 430 by wrongfully diverting water, the accused would be justified in preventing him forcibly from consummating that mischief in defence of the property of his master; but by the using of a heavy instrument like a spade on the head of

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1. (1960) 1 M.L.J. 37.
2. (1960) 2 M.L.J. 11.
3. (1960) 2 M.L.J. 327.
4. (1960) 1 M.L.J. 12.
5. (1960) 1 M.L.J. 332.
6. (1960) 1 M.L.J. (S.C.). 21.
7. (1960) 1 M.L.J. 339.
8. (1960) 1 M.L.J. (S.C.). 39.
9. (1960) 1 M.L.J. 341.

the deceased so forcibly as to fracture the skull extensively and injure the brain causing his death, the accused had exceeded the right of private defence and his act would fall within *Exception* 2 to section 300, and a conviction under section 304 will be justified. *Adimoola Moopan*, In re[1], decides that in the absence of the necessary criminal intention the mere fact that a person removed another's property with a view to compelling the other to pay up his lawful dues, such as rent etc., will not make him an offender and he cannot be convicted either under section 379 or under section 426.

CRIMINAL PROCEDURE CODE.

In *Perumal Konar* v. *Ponnan*[2], it is held that for the purpose of proceedings under section 145, Criminal Procedure Code, what is more important is not adjudication of title but possession at the crucial time ; and in the case of waste lands where khas possession cannot be demonstrated, possession will follow title. *Mookerjee*, In re[3], points out that section 177 laying down the ordinary rule as to jurisdiction adopts the English common law rule as to venue ; but the offence of criminal conspiracy has always been recognised as an exception with regard to the question of venue, and it may be tried not only in the place where the conspirators agreed to do the wrongful act which is the object of the conspiracy but also in any place where one of the criminal acts in pursuance of the conspiracy is committed ; that under section 180 where an act, which is an offence by reason of its relation to any other act which is also an offence, is committed, a charge of the first mentioned offence may be tried by the Court within the local limits of whose jurisdiction either act was done; and that where the offence of criminal conspiracy occurs and an offence in pursuance thereof is also committed, the offence of criminal conspiracy may be tried either at Calcutta where the offence, in the instant case, itself occurred, or at Madras where the offence or offences in pursuance of the conspiracy occurred ; and the fact that conspiracy is a substantive offence in itself would not take the offence of criminal conspiracy out of the ambit of section 180. In *Dhannjay Ram Sharma* v. *M. S. Uppadhaya*[4], the Supreme Court makes it clear that the mere fact that an opportunity to commit an offence (theft) is furnished by the official duty of the public servant (in the course of witnessing a search conducted by Special Police) is not such a connection of the offence with the performance of such duty as to justify even remotely the view that the act complained of is within the scope of the official duty of the accused and accordingly sanction under section 197 is not necessary for a complaint for such offence. *Public Prosecutor* v. *Sampath Kumar*[5], lays down that where a prosecution stopped under section 249, Criminal Procedure Code, is reopened it is not as if the prosecution commences only after the reopening but it is only a continuing of the prosecution orginally launched ; and hence, where a prosecution for non-payment of tax was commenced within the prescribed time under section 345 of the Madras District Municipalities Act but the proceedings were stopped under section 249, Criminal Procedure Code and were subsequently reopened, the mere fact that the period of three years had elapsed in the meantime will not bar the prosecution. In *Pramatha Nath Mukherjee* v. *State of West Bengal*[6], the Supreme Court holds that a Magistrate after making an order of discharge under section 251-A (2) in respect of a charge for an offence triable as a warrant case can still proceed to try the accused for another offence disclosed by the police report and triable as a summons case; and thus when a Magistrate took cognisance under section 190 (1) (*b*), Criminal Procedure Code of the offence under section 332, Indian Penal Code, he cannot but have taken cognisance also of the minor offence under section 323, Indian Penal Code; and so even after the order of discharge was made in respect of the offence under section 332 the minor offence under section 323 of which also he had taken cognisance remained for trial for which the procedure under Chapter XX of the Criminal Procedure Code can be followed. *Oomayan*, In re[7], expresses the view that the procedure indicated under section 361 cannot be applied to the case of a deaf-mute, since under that section whenever any evidence is given in a language not understood by the

1. (1960) 1 M.L.J. 84.
2. (1960) 2 M.L.J. 473.
3. (1960) 2 M.L.J. 340.
4. (1960) 2 M.L.J. (S.C.) 98.
5. (1960) 1 M.L.J. 94.
6. (1960) 2 M.L.J. (S.C.) 59.
7. (1960) 1 M.L.J. 83.

accused it should be interpreted to him in open Court in a language understood by him, whereas a deaf and dumb man can understand by signs and gestures only which do not form a language within the meaning of section 361. *Athipalayan*[1], In re, states that since sections 366 and 367 require that judgments must be pronounced in open Court, signed, and dated, where a Magistrate had merely noted in the docket-sheet the conviction and sentence, and no judgment had been written at all it would amount to an a illegality rendering the conviction and sentence liable to be set aside. *Seeni Ammal*, In re[2], states that it is permissible for a party to appeal by special leave against the acquittal under section 417 though he is a private party and not the State. *Public Prosecutor* v. *Joseph*[3], holds that in an appeal against acquittal the High Court will interfere only for substantial and compelling reasons ; and it will not interfere unless it is convinced that the interests of justice require that the acquittal must be set aside. In *Raban Ghela Jadhav* v. *State of Bombay*[4], the Supreme Court points out that while an appellate Court has power to dismiss an appeal summarily if it considers that there is no sufficient ground for interfering it has no power to direct that the appeal shall be only heard on the point of sentence; that such an order is not an order of summary dismissal under section 421 nor an order under section 422 ; that when an appeal is filed it is an appeal both against conviction and sentence, so much so, under section 423 the appellate Court can after hearing the appeal in disposing of it reduce the sentence ; but that does not entitle it to direct that an appeal is admitted only on the question of sentence. In *Mohamed Dastagir* v. *State of Madras*[5], the Supreme Court makes it clear that section 422 does not speak of notice of appeal being *served* on the accused but only states that notice is to be *given* to the accused ; that if the High Court is intimated that the accused has entered appearance and has notice of the appeal filed against him and the Court is requested not to issue any summons to him it can hardly be said that notice of the appeal has not been given to the accused; and in any event notice issued under section 422 to the advocate who had entered appearance for the accused is sufficient. *Nallathangal* v. *Nainan Ambalam*[6], holds that where a Magistrate makes an order dismissing a Hindu wife's petition against her husband under section 488 (1), on a finding of fact that the petitioner had been actually divorced from her husband by virtue of a caste panchayat and that there was no subsisting marriage between them, the High Court will not be justified in criminal revision in interfering with such a finding. *Seeni Ammal* In re[2], points out that if a party instead of appealing by special leave against an acquittal under section 417 prefers to file a revision under section 439 it may be done within two months of the date of acquittal ; it will then be possible for the High Court to order immediate notice to the Public Prosecutor for the State even before admitting the revision petition ; and that if the Public Prosecutor on a perusal of the records on such notice is satisfied that it is in the interests of justice to press for interference with the acquittal he may institute a regular appeal against the acquittal ; and the Court may then in the interests of justice deal with the appeal and also convict the accused in appropriate cases. In *Dr. Pal Chaudhury* v. *State of Madras*[7], the Supreme Court makes it clear that the combined effect of sub-sections (1) and (5) of section 479-A is to require the Court intending to make a complaint to record a finding that, in its opinion, a person appearing as a witness has intentionally given false evidence and that for the eradication of the evils of perjury and in the interests of justice it is expedient that such witness should be prosecuted for the offence, and to give the witness proposed to be prosecuted an opportunity of being heard as to whether a complaint should be made or not. The Supreme Court further points out that the finding required by section 479-A (1) is only of a *prima facie* nature; that it cannot be a finding which would have any force at the trial upon the complaint made pursuant to that finding ; and the notion of avoiding prejudice at the trial upon the complaint would not justify a clear breach of the terms of the section requiring a *prima facie* finding.

1. (1960) 2 M.L.J. 450.
2. (1960) 2 M.L.J. 507.
3. (1960) 1 M.L.J. 334.
4. (1960) 2 M.L.J. (S.C.) 35.
5. (1960) 2 M.L.J. (S.C.) 39.
6. (1960) 1 M.L.J. 134.
7. (1960) 2 M.L.J. (S.C.) 69.